

Special Road District Guidebook and Workshop

for Deschutes County Special Road Districts

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*Guidebook and Workshop materials developed by Community
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INTRODUCTION

In the fall of 1999, the Deschutes County Board of Commissioners contracted with Community Consulting Services (CCS) to explore the feasibility of designing a training course for special road district commissioners. A preliminary survey demonstrated the level of interest by local commissioners was strong enough to proceed with the development of a workshop that would assist district decision-makers with such topics as long range planning, contracting, and record keeping.

This guidebook and workshop are the result of survey responses, county official collaboration, and CCS's experience in working with local governments of all sizes. The guidebook contains workshop presentation materials, a comprehensive reference section, and contact information for additional resources district commissioners should find helpful in fulfilling their duties of office.

Deschutes County Commissioners, officials, and staff appreciate the time district commissioners devote to the performance of those duties, and hope that the information presented in this guidebook, and through the workshop, proves to have the value intended. Thank you for attending!

Special Road District Guidebook

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SECTION I

Creation of

CREATION OF ROAD DISTRICTS

ORS Chapters 371 and 198 set out the basic requirements for creation of a special road district:

- area must
 - > be contiguous
 - > not overlap with existing districts

- properties to be included must be benefited by creation of the district

Special road districts share some statutory requirements with other types of special districts, but not all provisions are the same.

CREATION OF ROAD DISTRICTS

There are specific procedural requirements to the formation process, including:

- signature requirements for petitions are set out in ORS Chapter 198
- proposal must include a
 - > feasibility statement, and
 - > a proposed first and third year budget
- proposed formation must
 - > include a tax rate limit
 - > be voted on at either the biennial primary or general election in even-numbered years
- petitions to form a new district must be filed no later than six months before the election

If election is successful, the first property tax revenues will be received in November following the election.

CREATION OF ROAD DISTRICTS

Once established, the district governing structure is initiated:

- county commission appoints 3 commissioners
 - > 3-year terms, staggered
 - > president, secretary, treasurer
 - > vacancies filled by county commission

- district board shall meet at least once per month
 - > all meetings open to public
 - > records shall be available to public

- financial operation
 - > all monies deposited in insured bank
 - > all expenses paid out by check/draft

District commissions are subject to a variety of local, state, and federal regulations, as referenced throughout this Guidebook. Due to continual changes in applicable laws, the district board of commissioners should regularly review their legal requirements for operating a special road district.

CREATION OF ROAD DISTRICTS

As long as a special road district board is following the overall purpose of the district, which is to improve roads within the district, it shall have the power:

- to make contracts
- to acquire, hold, receive and dispose of real and personal property
- to sue and be sued
- to exercise the powers of eminent domain
- to assess and levy taxes on all taxable real property in the district
- to do any other act necessary to carry out the purposes of ORS 371.305 - 371.360

Public Meetings Law

The Public Meetings Law, ORS 192.610 to 192.690, applies to meetings of the “governing body of a public body”, and covers state and local governmental boards, commissions, councils, committees, or subcommittees

- which consist of two or more members
- created by or pursuant to the constitution, a statute, administrative rule, intergovernmental agreement or bylaw
- when a quorum of members is present for the purpose of deciding or deliberating on public matters,
- or to gather information on which to deliberate,
- where the governing body has the authority to make decisions for or recommendations to the public body on the matter in question.

In other words, special road districts are subject to the Public Meetings Law.

Public Meetings Law

It is the intent of the Public Meetings Law that decisions of governing bodies be arrived at openly. A meeting is defined as the convening of any governing body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter.

There are three different types of meetings recognized:

- Regular
 - > reasonable notice required
- Special
 - > at least 24 hours' notice required
- Emergency
 - > less than 24 hours' notice required

Committee meetings and work sessions must also be open to the public, but attendees may not be allowed to participate or comment during the meeting unless authorized by the committee to do so.

Public Meetings Law

An Executive (Closed) Session is defined as any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters. Typically, these matters are limited to

- discussion of personnel matters, such as employee discipline or performance evaluation of an existing employee, or potential hiring of a specific individual
- negotiations on real estate matters, such as considering an offer on property owned by the governing body
- legal matters, such as discussion of pending or potential litigation matters

While the members of a governing body may come to informal consensus during an executive session, all formal actions must be conducted in open session.

Public Meetings Law

Notice of meetings should be reasonably calculated to give actual notice of the time and place for the meeting. Notification should include

- news media
- members of the governing body
- general public
- any person(s) who has stated in writing that he/she wishes to be notified of every meeting

Notice may be posted in a public area, published in local news media (display advertising is not required), personal delivery, and/or mailed via first class postage, facsimile or electronic device.

Public Meetings Law

With limited exception, written minutes must be taken at all meetings. and shall include at least the following:

- members present
- motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition
- results of all votes (by name)
- the substance of any discussion on any matter
- reference to any document discussed at the meeting

A verbatim transcript is not required. Meetings do not have to be recorded generally, although it is a good practice to do so. Executive sessions may be kept in the form of a tape recording.

Public Records Law

ORS 192.410 to 192.505 sets out the requirements of governing bodies to keep records and provide reasonable access to such records. A public record is defined as any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. "Writing" is defined expansively to include:

- handwriting, typewriting, printing, photostating, photographing and every means of recording, including
 - > letters, words, pictures, sounds, or symbols, or any combination thereof,
 - > all papers, maps, magnetic or paper tapes,
 - > photographic films and prints,
 - > magnetic or punched cards, discs, drums, or other instruments

- information stored on computer tape, microfiche, photographs, films, tape, or videotape recordings

Public Records Law

The right of any member of the public to inspect nonexempt public records is limited only by rules of reasonableness. A governing body is required to:

- provide proper and reasonable opportunities for inspection and examination of the records
 - > during normal business hours
 - > at the place where the records are kept
- furnish a certified copy of the record upon demand, if the record can be copied
- ensure that fees charged for the cost of providing access and/or copies of records, including staff time to search and/or reproduce requested records are reasonable

Exemptions of records disclosure include records pertaining to litigation, criminal investigatory material, real estate appraisal information, personnel disciplinary actions, and other records where the right for protection of an individual or negotiation process outweighs the public's right to access.

Public Records Law

ORS 192.001 to 192.190 regulate the custody, maintenance, and retention of public records, and provide a schedule, partially as follows:

- ordinances, resolutions
 - > permanent
- correspondence - ephemeral
 - > retain until read
- correspondence - general
 - > minimum 1 year
- correspondence - political/historical
 - > permanent
- meeting records
 - > permanent
- work schedules & assignments
 - > for directing employees, 3 years
 - > other records, 1 year
- vehicle maintenance records
 - > 2 years after vehicle disposed of
- financial work papers & reports, general
 - > 2 years
- audit records
 - > permanent

A more complete schedule of the OAR Division 103 rules on retention of records is contained in the Reference Section of this Guidebook.

SECTION II

Exercising Authority

EXERCISING ROAD DISTRICT AUTHORITY

Valid decisions and/or transactions are conducted according to proper procedures, including:

- a majority vote of the three-member board or pursuant to authority delegated by the board
 - > advisory committees cannot make decisions binding to the district
 - > some decision-making authorities cannot be delegated, such as budget adoption

- at a duly authorized district meeting

- on matters within the authority of the district

Parliamentary procedures are the best method of conducting district business at meetings. Copies of the handbook, Roberts Rules of Order, or a similar reference book, can be purchased at any bookstore.

EXERCISING ROAD DISTRICT AUTHORITY

Board action is required to:

- establish operating policies and internal control mechanisms
- approve or disapprove proposed annexations
- determine funding needs of district, and if necessary, approve measures for submission to voters on funding levels
- prioritize use of resources
- authorize transactions
- authorize expenditures, either individually or through an adopted budget

The board can appoint committees to help it accomplish some of its responsibilities, but it cannot delegate decision-making authority to the committees.

EXERCISING ROAD DISTRICT AUTHORITY

Decisions of the board:

- are expressed by formal votes taken by the board
- are typically made by a vote taken by the board, after
 - > one board member makes a motion, and
 - > another board member seconds the motion, and
 - > the board chair has invited discussion by the board on the motion
- may be expressed through
 - > formal resolution documents signed by the board
 - > signed transaction documents, such as contracts, letters, etc.
 - > motions memorialized only in the minutes of the board meeting in which it was passed
 - > a combination of the above

All decisions should be reflected by a motion passed and recorded in the meeting minutes, including the outcome of the vote .

Board Conduct Requirements

By law, a public official is any officer, employee, or agent who is serving:

- The State of Oregon
- Any of its political subdivisions
- Any other public body of the state

The law does not distinguish between people who are compensated and volunteers. Both are covered whether or not they are compensated.

Board Conduct Requirements

The main provisions are contained in ORS Chapter 244, which were voted in by Oregon voters in 1974. This body of law, in part:

- Requires disclosure of conflicts of interest
- Prohibits public officials from using their position for personal gain
- Provides penalties for ethical violations

The Government Standards and Practices Commission (GSPC) and its staff are available to assist public officials in avoiding ethical violations, which occur in three situations:

- Actual Conflict of Interest
- Potential Conflict of Interest
- Receiving Gifts

The address and phone number of the GSPC is listed in the Resource Section of this Guidebook.

Board Conduct Requirements

When a public official is faced with an actual or potential conflict of interest, he/she:

- is required to disclose the actual or potential conflict of interest in writing

- may voluntarily remove himself/herself from decision-making, supervision, or similar authority-related role

Failure to take appropriate action may result in imposition of the following penalties:

- civil penalties of up to \$1000

- removal from office

- repayment to the State or political body of twice the amount benefitted

Board Conduct Requirements

Oregon law prohibits public officials from receiving gifts from people or organizations doing business with that public official. As defined by Oregon law, a gift is any of the following:

- something of value that a public official accepts and for which the official does not pay back equal value

Examples of gifts are:

- > product samples
- > candy or flowers
- > meals and/or drinks
- > promotional clothing
- > passes to events

- the waiving of debt, as well as the giving of some object or service

- something received that is not available to the general public for the same price or conditions

Board Conduct Requirements

The law does allow the following exceptions to the rules about receiving gifts:

- gifts from relatives
- receiving gifts totaling less than \$100 in value during a calendar year from people or an organization with an interest in the public body
- limited amounts for food, lodging, and travel for events related to official duties of the public official
- food and beverage, when consumed in the presence of the purchaser
- entertainment in the presence of the purchaser, up to \$100 a person on a single occasion and not totaling more than \$250 a year

Expenditure Limitations

District board members are subject to personal liability for unlawful expenditures under Oregon law (ORS 294.100), as summarized as follows:

- Rule: It is unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by law
 - > road district commissioners are interpreted to be included in this rule
 - > money refers to tax receipts, proceeds of bond sales or loans, grants and user fees (such as sewer and water fees)

- Consequence for violation: such public official shall be civilly liable for the return of the money by suit of the district attorney or at the suit of any taxpayer of such district

Examples of violations are contained on the next few pages of this Section of the Guidebook.

Expenditure Limitations

Examples of violations to the rule regarding unlawful expenditures by public officials:

- Expenditures for purposes not authorized by law
 - > state statute authorizes road district to spend money for improvement or maintenance of roads. Governing body of a road district expends funds for purchase of land for park purposes.

- Expenditure of funds without governing body authority
 - > individual commissioner authorizes an expenditure of money without approval of other board members and for an item that was not included in any approved budget. The expenditure is never ratified by the governing body. The expenditure is unauthorized even if the expenditure is for a purpose falling within the statutory authority of the district.
 - > governing body authorizes expenditure not authorized by adopted budget (may be some exceptions for districts not subject to local budget law).

SRD's are not subject to local budget laws

Expenditure Limitations

Examples of violations to the rule regarding unlawful expenditures by public officials, *continued*:

- Spending for purposes that are outside of adopted authorization of the governing body, where state law limits spending to purposes set forth in adopted authorization
 - > directors of a small sanitary authority adopt a resolution authorizing issuance of bonds for certain purposes. State law provides that expenditure of bond proceeds are limited to the purposes set forth in the order calling for the election on the question of issuance of the bonds. The directors authorize expenditures of bond proceeds outside of the purposes set forth in the order. Directors who authorize such expenditures could be held personally liable for the misappropriation of those bond proceeds.

Expenditure Limitations

There are other provisions of law that expenditure of public moneys for otherwise authorized purposes may fall under, as these examples indicate:

- Spending for purposes that are in violation of a specific statute prohibiting public expenditures for certain activities
 - > state law prohibits any person from requiring a public employee to aid, promote, or oppose an election measure
 - > state law also prohibits any public employee from promoting or opposing adoption of an election measure while on the job
 - > at the direction of county officials, employees of a county health department engage in a public information campaign concerning the benefits of fluoridation at the same time a measure is on the ballot to repeal a county measure authorizing fluoridation of drinking water
 - > public officials could be held liable if it is determined that the public information campaign was aimed at opposing the adoption of the anti-fluoridation measure

Expenditure Limitations

There are other provisions of law that expenditure of public moneys for otherwise authorized purposes may fall under, as these examples indicate, *continued*:

- Expenditure of moneys in violation of public contracting laws raises issues of whether authorized expenditures are unlawful and could subject officials to liability under ORS 294.100
 - > no reported cases have sought personal liability damages from public officials for a breach of the public contracting rules
 - > the common remedy is to seek to have the contract voided

- Public officials may be personally liable for unlawful expenditures of public money even if the expenditures were otherwise properly authorized by action of the board and expended for public purposes
 - > in previous flouridation example, expenditure of funds for flouridation campaign was authorized by laws that allowed county health departments to disseminate information on health related issues and by budget adopted by the board of county commissioners

Financial Planning

While special road districts are not subject to all provisions of Oregon's Local Budget Law, certain principles should be applied in the development and oversight of a district's finances. This includes three basic phases of financial planning on an annual basis:

- budgeting
 - > done on an annual basis

- operating
 - > depending on size of district, may involve daily, weekly, and/or monthly processes

- evaluating
 - > at a minimum, includes annual review and/or audit

The state requires filing of Form LB50 and copy of resolution by governing body adopting budget with the county assessor's office no later than July 15 each year. LB 50 forms are mailed directly to each district near the end of each fiscal year.

SECTION III

Financial Planning

Financial Planning

Senate Bill 123 requires the Department of Revenue to recalculate the permanent rate authority of all taxing districts in Linn and Deschutes County. Some of the key provisions in SB 123 that districts should be aware of include:

- the new rate limits established by SB 123 are not effective until the 2000-2001 tax year

- in general, the rate limits in Deschutes County are either the same or slightly lower than the previous estimates

- to the extent that districts imposed tax rates in the 1999-2000 tax year that exceed the new final rate limit, "excess taxes" will be taken out of the 2000-2001 tax proceeds

Final rates for Deschutes County taxing districts are shown in the Reference Section of this Guidebook.

Financial Planning

Preparing and adopting an annual operating budget is one of the most important processes a district board conducts. The annual budget reflects the needs, policies, and goals of the district for the year (and perhaps longer). Components of an annual budget include

- income
 - > taxes (including prior year taxes)
 - > investment income
 - > fees
 - > other income

- expenses
 - > personnel or administrative costs
 - > materials and supplies
 - > legal and professional fees
 - > contract services
 - > capital improvements
 - > uncollected taxes

The budget is a tool through which district members can gain insight into the district's plans for the coming year, and a base against which the members and board can monitor the district's performance.

Financial Planning

The person(s) responsible for preparing a draft budget for the district should consider the following:

- goals and objectives of the district board
- required services (and levels)
- desired services (and levels)
- historical operating costs and unit consumption data
- patterns of extraordinary costs
- proposed or known significant changes to past costs based on rising prices for services or materials
- information gleaned from physical inspection of district assets (roads)

A successful budget process gives district members and the board an opportunity to be involved in budget decisions.

Financial Planning

A process for systematically maintaining accurate expense and revenue information is important in providing the board with reliable information about the financial status of the district. Some of the critical components of that operating process include

- written policies on the handling of district funds

- monthly financial statements
 - > balance sheet
 - > income and expense statement

- bank statements/reconciliation

A board cannot delegate its legal responsibility for overseeing the financial operation of the district, even though it may delegate some of its responsibilities to a manager or accountant.

Financial Planning

Sound written policies, and the adherence to them, are the single best strategy a district board can provide for the management of district funds.

Topics that should be covered include:

- cash handling guidelines
 - > timeliness of deposits
 - > signature authority for expenses, investments

- collection of funds owed to district
 - > process for billing/aging of accounts

- investment of funds
 - > bank accounts in insured institution
 - > no high risk strategies

A bonus advantage of having clear, written policies in place is that such policies can serve as a guidebook for new treasurers or board members of a small district, who often do not have the benefit of cross training with the person previously responsible for handling district funds.

Financial Planning

An independent evaluation of the manner in which district funds are handled and reported gives protection to the board, staff, and district members. There are three levels of financial review that may be performed:

- a compilation
 - > is a report in which an accountant takes information provided by the district and puts it into a financial format
 - > does not insure accuracy of the information
- a review
 - > requires an accountant to perform certain analytical procedures and make certain inquiries about the district's financial condition
 - > provides limited assurance that the district's financial statements are in accordance with generally accepted accounting principles
- an audit
 - > requires an auditor to do independent tests of the district's financial information and management system
 - > provides highest degree of assurance, as well as professional opinions of sound financial management
 - > may include recommendations for improvements

Financial Planning

ORS 297.425 provides that every municipal corporation shall be audited and reviewed at least once every calendar or fiscal year, although smaller districts may be exempt from the general rule:

- a municipal corporation is defined as a county, city, district, or other corporation upon which is conferred powers of the state for the purpose of local government

- all districts are subject to audit by petition
 - > if within 6 months of the end of the fiscal year for which the audit is requested, 10 residents of the municipal corporation file a petition with the Secretary of State

- an audit is conducted either by an accountant under contract by the district, or by the Secretary of State, paid for by the district

Financial Planning

There are two types of exemption from the audit requirements of ORS 297.425:

- any municipal corporation that, in any given calendar or fiscal year,
 - > has total receipts and expenditures of \$150,000 or less
 - > has submitted financial statements to the Secretary of State within 90 days of the end of the year
 - > and for which a fidelity bond has been obtained in the amount of the previous year receipts

or

- any municipal corporation that, in any given calendar or fiscal year,
 - > has total receipts and expenditures between \$150,000 and \$500,000
 - > has submitted financial statements within 180 days of the end of the year, which statements have been reviewed by an accountant or the Secretary of State
 - > and for which a fidelity bond has been obtained in an amount at least equal to 10% of the total receipts but not less than \$10,000

Long Range Planning

With consistent financial systems in place, a district is able to engage in long range planning activities that further contribute to successful asset management. Primary steps in constructing a long range plan include:

- identify existing assets
 - > establish current value of roads
 - > all operating and investment funds
 - > current value of equipment/supplies

- develop replacement schedule
 - > determine life of existing improvements
 - > document basis for value

- identify future needs
 - > select 5- or 10-year planning horizon
 - > include both replacement and upgrade projects

- determine capitalization plan
 - > annual contributions to reserve/replacement fund
 - > identify funding strategy in plan, such as loans or special assessments

Gaining necessary approvals from district members or financing sources is much easier with a clear plan in place that includes a track record of monitoring and performance over several years.

Boundary Changes

ORS Chapter 198 provides requirements for annexation, withdrawal of property, mergers and consolidations for special districts. There are several specific requirements that districts must meet in order to assure accurate tax assessment and collection following any boundary changes, including:

- filing of various documents with
 - > Department of Revenue
 - > Secretary of State
 - > county clerk
 - > county assessor

- receive approval from Department of Revenue for taxing purposes
 - > provide final descriptions and maps no later than March 31

- file proposed boundary changes by March 31 if final descriptions are not available, for changes effective between April 1 and June 30

A good source of information on this subject is the Department of Revenue publication "Boundary Change Information". Instructions on how to obtain a copy of this booklet are contained in the Resource Section of this Guidebook.

SECTION IV

Contract/Purchases

Public Contracting Provisions

It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible. ORS Chapter 279 sets out extensive requirements for the processes and determinations made by public entities making purchases of goods and services. Some of the elements of the bidding and award processes that are regulated by the state include:

- advertising for bids or proposals
 - > timing, frequency, and methods

- selection criteria
 - > low or “best” bid
 - > type of contract
 - > prequalifications and disqualifications

- process
 - > notice requirements to bidders
 - > response to bidder inquiries

- evaluation and award
 - > criteria eligibility
 - > legal obligations of governing body and successful bidder/proposer
 - > payment/retainer provisions

A Model Public Contract Rules Manual is available for purchase through the Department of Justice. Contact information is contained in the ResourcesSection of this Guidebook.

Public Contracting Provisions

Certain exemptions are allowed under Model Public Contracting Rules, including:

- contracts for small purchases
 - > less than \$5,000

- emergency contracts
 - > less than \$50,000 and
 - > must conduct hearing

- contracts with other entities
 - > local, state, or federal agencies
 - > qualified nonprofits providing employment opportunities for disabled individuals

- certain insurance and service contracts

- contracts with public agencies utilizing an existing solicitation as long as
 - > original contract meets requirements of ORS 279
 - > contract allows other public agency usage of the contract
 - > original contracting agency concurs

Public Contracting Provisions

Oregon has Prevailing Wage Rate laws that may apply to contracts districts enter into, according to these guidelines:

- public works projects that cost \$25,000 or more
- projects that involve construction, reconstruction, major renovation or painting
- projects that are not regulated under the federal Davis-Bacon Act

Dividing a project up to avoid prevailing wage requirements is not allowed.

Public Contracting Provisions

A checklist for contracting agencies includes these activities:

- including prevailing wage rate fee, rates, and other required language in any contract specifications covered by this law
- submit a Notice of Award to BOLI within 30 days of awarding a contract subject to prevailing wage
- submit a List of Planned Public Improvements
- verify that none of the contractors or subcontractors working on the project are on BOLI's List of Ineligibles
- require that the contractor is bonded or obtain a cashier's check or certified check from the contractor, unless exempt
- verify that the project manager has knowledge of construction and worker classifications

More checklist items are contained on the next page.

Public Contracting Provisions

A checklist for contracting agencies includes these activities, continued:

- withhold sufficient retainage
- verify that subcontractors know that the job is a prevailing wage rate job
- confirm that the correct prevailing wage rates and the details of any benefit plans are conspicuously posted
- verify that all contractors are filing complete and accurate certified payrolls
- examine the filed certified payroll records to make sure that contractors are paying employees the correct prevailing wage rate

A summary of BOLI's handbook is contained in the Reference Section of this Guidebook, and contact information for more information is contained in the Resource Section.

SECTION V

Operating District

Operating an Effective District

Policy development does not need to be complicated, but should include these basic principles:

- opportunity for district member involvement throughout process of adoption
 - > provide forum(s) for identification/discussion of issues and options
 - > inform members of progress through newsletters, distribution of work session summaries, update reports

- include clear statement of intent or purpose for each policy adopted
 - > cannot conflict with local, state, or federal laws
 - > adopt in form of resolution

- consistent application of policy
 - > no changes to written policy without due process
 - > evaluate effectiveness periodically

Keeping a Book of Resolutions, indexed by subject and adoption date, is an effective way of managing policy records.

Operating an Effective District

Regardless of district size, internal operating procedures should be written, followed, and documented to ensure consistency in dealing with district members, district business, and relationships with external entities. A basic policy on how communications are conducted should include guidelines covering:

- internal board communications
 - > roles of board members, officers
 - > procedures for setting of agenda, relaying district member contacts, and decision-making

- board to/from district members
 - > regular method of communication
 - > process for airing of concerns

- board to external entities
 - > who has authority to represent district
 - > process for determining district position

Gaining necessary approvals from district members or financing sources is much easier with a clear plan in place that includes a track record of monitoring and performance over several years.

Operating an Effective District

A district's relationship with Deschutes County includes several aspects of the organization, including

- contracting
 - > the Board of County Commissioners serves as the local contract review board, unless a district has adopted a resolution naming the district board as such

- appointment
 - > the Board of County Commissioners currently appoints district board members annually for each district's term replacements and vacancies as they arise

- taxes
 - > the county treasurer collects and distributes tax proceeds assessed by the district

Other county departments may occasionally provide information or other assistance to districts, on a limited basis and depending upon availability.

Operating an Effective District

The hiring and supervision of staff is a major responsibility of a district board, and board members should take these issues into consideration before employing any personnel:

- What is the advantage of hiring staff versus contracting out for services?
 - > compare cost and control
 - > look at current availability

- What are the district's legal responsibilities regarding personnel?
 - > supervision and direction
 - > compliance with employment laws
BOLI, ADA, EEO, Family Leave Law, etc.

- If the decision to hire has been made, are our personnel management policies and procedures in place?
 - > clear job description
 - > reporting relationship established
 - > compensation/benefits defined
 - > periodic review/evaluation process identified, with clear goals/standards determined

Poor records management and lack of consistency in applying performance criteria are two ways boards often get into trouble with personnel issues.

Operating an Effective District

Risk management is essential for districts of all sizes in today's litigious environment. Some of the considerations in development of sound risk management practices are summarized below:

- identification of potential exposures
 - > personnel
 - > equipment & property
 - > maintenance practices
 - > board or board member actions

- assignment of risk
 - > eliminate: cancel or determine not to provide a particular service or engage in a particular type of activity to avoid exposure
 - > mitigate: alter method of service delivery by upgrading equipment or contract out instead of using staff to perform
 - > insure: accept that there is a certain level of risk to be taken, but purchase coverage for unforeseen events

- continuous education
 - > part of mitigation strategy, but often overlooked as an active part of risk management for small organizations

Operating an Effective District

The Tort Claims Act, ORS 30.265, provides some protections for districts and other public bodies by limiting the liability of districts, including their officers, employees, or agents acting within the scope of their authority:

- liability is limited to
 - > \$50,000 for property damages to any individual claimant arising out of one claim
 - > \$100,000 for personal injury claims arising out of one claim
 - > \$500,000 for any number of claims arising out of a single incident

- claimant must present a written notice or other notice calculated to apprise the public body of the tort claim within 180 days after the occurrence
 - > notice must be provided to a member of the district board or an officer or agent of the district

- typical actions against a road district would be negligence for damages to a person or vehicle suffered by the person as a result of the district's failure to be careful in exercising its duties

A "tort" is a breach of a legal duty that is imposed by law (not contractual duties or obligations) that results in injury to a person for which the law provides a civil right of action for damages. Sections of the Tort Claims Act are included in the Reference Section of this Guidebook.

Operating an Effective District

Understanding how to avoid or reduce exposing the district to claims is an important risk management function of the district board:

- discretionary immunity may be invoked by
 - > adopting a maintenance and/or operations plan, and
 - > consistently following such duly adopted plans

- purchasing liability insurance
 - > the Special Districts Association of Oregon (SDAO) provides coverage for many special districts in the state
 - > there are commercial providers that offer plans, as well

- properly supervising all officers or employees of the district
 - > if an officer and/or employee is sued while acting within the scope of his or her authority, then the district is the proper party to be sued, and the district is responsible for paying the costs of any damages awarded to the claimant

Contact information for SDAO is contained in the Resources Section of this Guidebook.

SECTION VI

Road Maintenance

Road Maintenance Responsibilities

The responsibility and authority for various road functions in unincorporated areas of the county are divided between Deschutes County and its road districts. As the principal road authority, Deschutes County retains the exclusive authority to:

- grant permits to public and private utilities to place utility facilities in rights-of-way
- establish and enforce regulations to limit encroachments in the public right-of-way and order their removal
- establish weight limits
- issue gate or stock guard permits
- abate road hazards under ORS 368.251 - 368.281

*Establishing speed limits is a state or county matter.
Road districts have no police powers.*

Road Maintenance/Development

Local Improvement Districts (LIDs) are created to construct road improvements that are financed by special assessment against benefitted properties. The process of formation includes:

- a petition requesting the improvements
 - > signed by 25% of land owners abutting the proposed improvements
 - > filed with the Board of County Commissioners
 - > filing fee of \$800
- a feasibility study
 - > completed by the Road Department
 - > provides information to determine whether to proceed with formation
- discussion/comment from owners
 - > neighborhood meetings
 - > mail poll, which must gain approval by 60% of owners to proceed
 - > public hearing, followed by Board of County Commission determination whether to proceed
- development of project
 - > lien notification to owners
 - > construction of improvements
 - > tabulation of final costs to owners
 - > collection of assessments

A more detailed summary is included, along with the full County Code, in the Reference Section of this Guidebook

Road Maintenance/Development

There are extensive skills and techniques employed today in properly maintaining dirt roads, which many districts have responsibility for. Some basic considerations, however, are helpful for district board members to understand. There are three basic elements to effective dirt/gravel road maintenance:

- proper road surface material
 - > good gradation
 - > proper moisture
 - > proper compaction

- proper grooming techniques
 - > grade entire roadway
 - > aim for quality, not speed
 - > cut all washboards/potholes
 - > cut at predetermined cross slope
 - > mark centerline
 - > lay back in first gear
 - > never leave a windrow or working berm

- use of dust suppressants/base stabilizers

The county road department has some opportunities for training operators of graders and rollers, and can serve as a resource for checking on the effectiveness of various materials used in road maintenance.

SECTION VII

Resources

Special Road District Guidebook

Resources Section

Deschutes County:

Legal Department	541) 388-6624
Finance Dept. (Treasurer)	541) 388-6559
Assessor/Tax Department	541) 388-6508
Road Department	541) 388-6581

Helpful Web Sites:

www.deschutes.org
www.leg.state.or.us
www.sos.state.or.us
www.dor.state.or.us

For questions or information on Ethics Laws, contact:
Government Standards and Practices Commission (GSPC)
100 High St. SE, Ste. 220
Salem, OR 97301-3607
503) 378-5105

To order a Model Public Contract Rules Manual:

Call 503) 378-2992 ext 6, leave name/address info to be sent an order form
or

Send \$20 (or check for current price at above number) to
Publications Section
1162 Court Street NE, Room 16
Salem, OR 97310

To order a Public Records and Meetings Manual,
Same as for Model Public Contract Rules Manual

To obtain a current list of qualified municipal auditors:

Send a written request to
Board of Accountancy
3218 Pringle Road SE, Suite 110
Salem, OR 97302-6307

To obtain a copy of a Prevailing Wage Rate Law Handbook (\$2.00) :

Bend office - 1250 NE 3rd St, #B-105, Bend, OR 97701 541) 388-6330
or access @ www.boli.state.or.us

To contact the Special Districts Association of Oregon (SDAO):

P.O. Box 12613	503) 371-8667
Salem, OR 97309	Pat Lynch, Executive Director

Special Road District Guidebook

Reference Section Index

Creation of Special Road Districts

ORS 371.305 - 371.385

Public Meetings

ORS 192.610 - 192.690

Public Records Inspection

ORS 192.410 - 192.505

Public Records Policy & Retention Schedule

ORS 192.001 - 192.190

OAR 166-103-0005-0045

Expenditure Limitations

ORS 294.100

Senate Bill 123 Final Rates

Sample Financial Documents (Budget, Income & Expense Statement, Balance Sheet)

Audit Requirements & Exemptions

ORS 297.425 - 297.445

Special Districts Generally

ORS Chapter 198

Election Dates, ORS 255.325 - 255.345

Ballot/Petition Requirements, ORS 250.005 - 250.044

Taxation for Local Improvements, ORS 280.040 - 280.150

Public Contracting

Contract Review Board, ORS 279.055 - 279.056

Prevailing Wage Rates Handbook Summary

(see Section VI for how to order Model Public Contract Rules Manual)

Tort Claims Act

ORS 30.260 - 30.300

Formation of Local Improvement District (L.I.D.)

L.I.D. Formation Brochure

Deschutes County Code Section 12.48

urer to the account of the road district. No part of such fund shall be transferred or loaned.

(2) Except as provided in subsection (3) of this section, the whole amount of the tax money levied and collected by the road district shall be expended under the supervision of the county court upon roads within the road district boundary of the district voting the tax as the boundaries existed at the time the tax was voted, and not elsewhere.

(3) The fund collected from taxes levied and assessed by a road district comprising and constituted from an incorporated city, and from property situated within such municipal corporation, shall be expended under the supervision of the governing body of the incorporated city and not under the supervision of the county court. This fund shall be paid over to the incorporated city by the county treasurer when collected. [Amended by 1983 c.350 §240; 1985 c.307 §3; 1987 c.667 §3; 1989 c.593 §4]

371.107 [1985 c.307 §3; 1987 c.667 §4; repealed by 1997 c.541 §389]

371.110 Effect of change of district boundaries on road tax levy. If the boundaries of any road district are changed after the levy of any road tax in or for such road district and before the expenditure of the tax, provision shall be made by the county court for such expenditure in the localities contemplated at the time of levy, notwithstanding the change in boundaries.

371.207 [Repealed by 1969 c.50 §1]

371.217 [Repealed by 1969 c.50 §1]

371.215 [Repealed by 1969 c.50 §1]

371.220 [Repealed by 1969 c.50 §1]

371.225 [Repealed by 1969 c.50 §1]

371.230 [Repealed by 1969 c.50 §1]

371.235 [Repealed by 1969 c.50 §1]

371.240 [Repealed by 1969 c.50 §1]

SPECIAL ROAD DISTRICTS

371.305 Authority to establish special road districts. Contiguous territory lying within any county and not incorporated within the limits of any incorporated city may be formed into, or included in, a special road district in the manner provided by ORS 371.305 to 371.360. [Amended by 1961 c.681 §1; 1965 c.498 §4]

371.310 [Amended by 1965 c.498 §5; 1969 c.568 §1; repealed by 1971 c.727 §203]

371.315 [Repealed by 1971 c.727 §203]

371.318 Formation order to declare whether district board elected or appointed; change in method of selecting board; cost of election. (1) If a county court approves a petition for formation of a special road district, the order of the county

court declaring the formation shall also declare, in addition to other matters specified in ORS 198.810, whether the commissioners of the district shall be appointed by the county court or elected by the electors of the district.

(2) When a special road district is situated within a county, the county court, by ordinance, may provide for a change in the method of selection of the commissioners of the district. The ordinance shall specify whether election or appointment shall be the method of selecting commissioners and shall prescribe the procedures for effecting the change.

(3) When a county court, by an order or ordinance described in this section, requires the commissioners of a special road district to be elected, the county shall pay the costs of conducting the elections at which the commissioners of the district are elected. [1999 c.764 §2]

371.320 [Repealed by 1971 c.727 §203]

371.323 Election of first commissioners. If a proposal for formation of a special road district is approved and the proposal specifies an elected district board of commissioners, members of the district board of commissioners shall be elected at the election held to form the district. [1999 c.764 §4]

371.325 [Repealed by 1971 c.727 §203]

371.330 Appointment of first commissioners. If a proposal for formation of a district is approved and the proposal specifies an appointed district board of commissioners, the county court shall appoint three persons with the qualifications described in ORS 371.338 (1) to be the first commissioners of the district and shall designate the term of office of each. [Amended by 1961 c.681 §2; 1965 c.498 §6; 1971 c.727 §102; 1999 c.764 §3]

371.335 [Repealed by 1971 c.727 §203]

371.336 Powers of district. From the date of formation, the special road district is a municipal corporation for the purpose of improving roads within the district. A special road district shall have the power:

- (1) To make contracts.
- (2) To acquire, hold, receive and dispose of real and personal property.
- (3) To sue and be sued.
- (4) To exercise the power of eminent domain.
- (5) To assess, levy and collect taxes on all taxable real property within the district.
- (6) To do any other act necessary to carry out the purposes of ORS 371.305 to 371.360. [1961 c.681 §5; 1963 c.9 §20; 1965 c.498 §7; 1969 c.568 §2; 1971 c.727 §103; 1987 c.667 §6]

371.338 District board of appointed commissioners; qualification; term; vacancies; oath. (1) The powers of a special road district are vested in a district board of commissioners consisting of three commissioners appointed by the county court. Each commissioner shall be an elector of the district. The term of office of a commissioner is three years commencing on January 1 of the year of appointment. Vacancies on the board shall be filled by the county court by appointment for the unexpired term.

(2) Notwithstanding the three-year term of office prescribed in subsection (1) of this section, of the commissioners first appointed to a board one commissioner shall be appointed for a term ending December 31 of the second year following the year in which that commissioner first takes office, one commissioner for a term ending December 31 of the year following the year in which that commissioner first takes office and one commissioner for a term ending December 31 of the year in which that commissioner takes office.

(3) Before entering upon the duties of office, a commissioner shall take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the commissioner's knowledge and ability. [1961 c.681 §6; 1983 c.83 §81]

371.340 [Repealed by 1961 c.681 §14]

371.342 Officers of appointed district board; meetings; records. As soon as possible after the first commissioners are appointed to the district board of commissioners, and thereafter during each January, the board shall meet and organize by selecting from their number a president, a secretary and a treasurer. The board shall hold one regular meeting each month at a time and place within the district designated by the board. All meetings of the board shall be open to the public and the records of the district shall be available for public inspection. [1961 c.681 §§7,8; 1969 c.344 §5; 1969 c.345 §7]

371.344 [1961 c.681 §9; 1963 c.9 §21; 1965 c.498 §8; 1973 c.796 §59; 1983 c.83 §82; 1983 c.350 §241; 1997 c.541 §384; repealed by 1999 c.632 §30]

371.345 [Amended by 1959 c.102 §1; 1961 c.681 §10; 1967 c.609 §8; 1971 c.647 §67; 1975 c.647 §32; repealed by 1983 c.350 §331a]

371.347 Alternative provisions for elected board of commissioners. When a special road district has an elected district board of commissioners, ORS 371.349 and 371.351 are effective in that district in lieu of ORS 371.338 and 371.342. [1999 c.764 §5]

371.349 District board of elected commissioners; qualification; term; vacancies; oath. (1) The powers of a special road district are vested in a district board of

commissioners consisting of three commissioners elected by the electors of the district. Each commissioner shall be an elector of the district. The term of office of a commissioner is four years commencing on July 1 following the date of election. A commissioner may serve until a successor is elected and qualified. Vacancies on the board shall be filled by the district board by appointment for the unexpired term.

(2) Notwithstanding the four-year term of office prescribed in subsection (1) of this section, of the commissioners first elected to a board, the term of one commissioner shall end on June 30 of the second year following the year in which that commissioner first takes office.

(3) ORS chapter 255 governs the nomination and election of the commissioners of a special road district and the conduct of all elections in the district.

(4) Before entering upon the duties of office, a commissioner shall take and subscribe an oath to support the Constitutions and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the commissioner's knowledge and ability. [1999 c.764 §6]

371.350 [Amended by 1961 c.681 §11; 1971 c.647 §68; repealed by 1983 c.350 §331a]

371.351 Officers of elected district board; meetings; records. As soon as possible after the first commissioners are elected to the district board of commissioners, and thereafter during each July, the board shall meet and organize by selecting from their number a president, a secretary and a treasurer. The board shall hold one regular meeting each month at a time and place within the district designated by the board. All meetings of the board shall be open to the public and the records of the district shall be available for public inspection. [1999 c.764 §7]

371.355 [Amended by 1961 c.681 §12; repealed by 1971 c.647 §149]

371.360 Deposit of tax proceeds in bank. (1) The proceeds of the tax levied and collected for the district shall be deposited in a bank or banks designated by the district board of commissioners. Such moneys shall be paid out only upon order of the board by checks or drafts signed by the president and treasurer of the board. All deposits of any district in any bank in excess of the amount protected by Federal Deposit Insurance Corporation insurance shall be secured by deposit of bonds of the United States.

(2) Any moneys on deposit in a county treasury in a special fund of a road district on August 9, 1961, shall be paid to the dis-

trict board of commissioners for deposit as provided in subsection (1) of this section. [Amended by 1961 c.681 §13]

371.365 [Repealed by 1961 c.681 §14]

371.370 [Repealed by 1961 c.681 §14]

371.375 [1965 c.498 §2; repealed by 1971 c.727 §203]

371.380 [1965 c.498 §3; repealed by 1971 c.727 §203]

371.385 Certain tax limitations not in effect after August 22, 1969. If any district existing on August 22, 1969, had a tax limitation set forth in the petition for formation as provided by ORS 371.310, prior to amendment by section 1, chapter 568, Oregon Laws 1969, the limitation stated in such petition shall not be effective to limit the taxing authority of any such district after August 22, 1969. Such limitation shall be construed to be effective only to limit taxes levied prior to August 22, 1969, and after the formation of the district. [1969 c.568 §3]

Note: 371.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 371 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ROAD ASSESSMENT DISTRICTS

371.405 "County court" defined. As used in ORS 371.405 to 371.535, "county court" includes the board of county commissioners sitting for the transaction of general county business. [Amended by 1955 c.227 §1; 1971 c.647 §69]

371.410 Formation of road assessment district in counties with 19,000 to 25,000 population; effect of population increase. (1) A road assessment district may be formed in any county having a population of 19,000 and not more than 25,000, as shown by the decennial federal census, and shall consist of an area of more than 20,000 acres or an assessed valuation of taxable property of not less than \$1 million according to the last county assessment roll. A road assessment district may be formed to provide for the improvement, repair or reconstruction of the public roads within such area of land.

(2) A road assessment district formed under subsection (1) of this section shall continue in existence under the provisions of ORS 371.405 to 371.535 notwithstanding a growth in population exceeding 25,000, as shown by a subsequent decennial federal census, in the county where the road district was formed. [Amended by 1955 c.227 §2; 1971 c.727 §104; 1981 c.69 §1]

371.415 [Repealed by 1971 c.727 §203]

371.416 Election procedure; initiative and referendum. (1) ORS chapter 255 governs the following:

(a) The nomination and election of directors except as provided in ORS 371.455.

(b) The conduct of district elections.

(2) The electors of a district may exercise the powers of the initiative and referendum regarding a district measure, in accordance with ORS 255.135 to 255.205. [1983 c.350 §2]

371.420 [Repealed by 1971 c.727 §203]

371.425 [Repealed by 1971 c.647 §149 and 1971 c.727 §203]

371.430 [Repealed by 1971 c.727 §203]

371.435 [Repealed by 1971 c.647 §149]

371.440 [Repealed by 1971 c.727 §191]

371.445 [Repealed by 1971 c.727 §203]

371.450 Election of district directors; terms; oaths; qualifications; vacancies. (1) Except as provided in subsection (2) of this section, the term of director is four years.

(2) The three directors elected as the first district board shall determine by lot the length of term each shall hold. The term of one director shall expire June 30 next following the first regular district election and the terms of two directors shall expire June 30 next following the second regular district election.

(3) Within 10 days after receiving certificates of election, the directors shall take and file their oaths, each of which shall be filed in the office of the directors.

(4) A director shall be an elector of the district and shall have resided within the proposed district for more than 30 days immediately prior to the date of the election.

(5) The board of directors shall fill any vacancy on the board by appointment as provided in ORS 175.320. [Amended by 1969 c.669 §6; 1971 c.647 §73; 1971 c.727 §§5,194; 1973 c.796 §60; 1975 c.647 §33; 1983 c.350 §244]

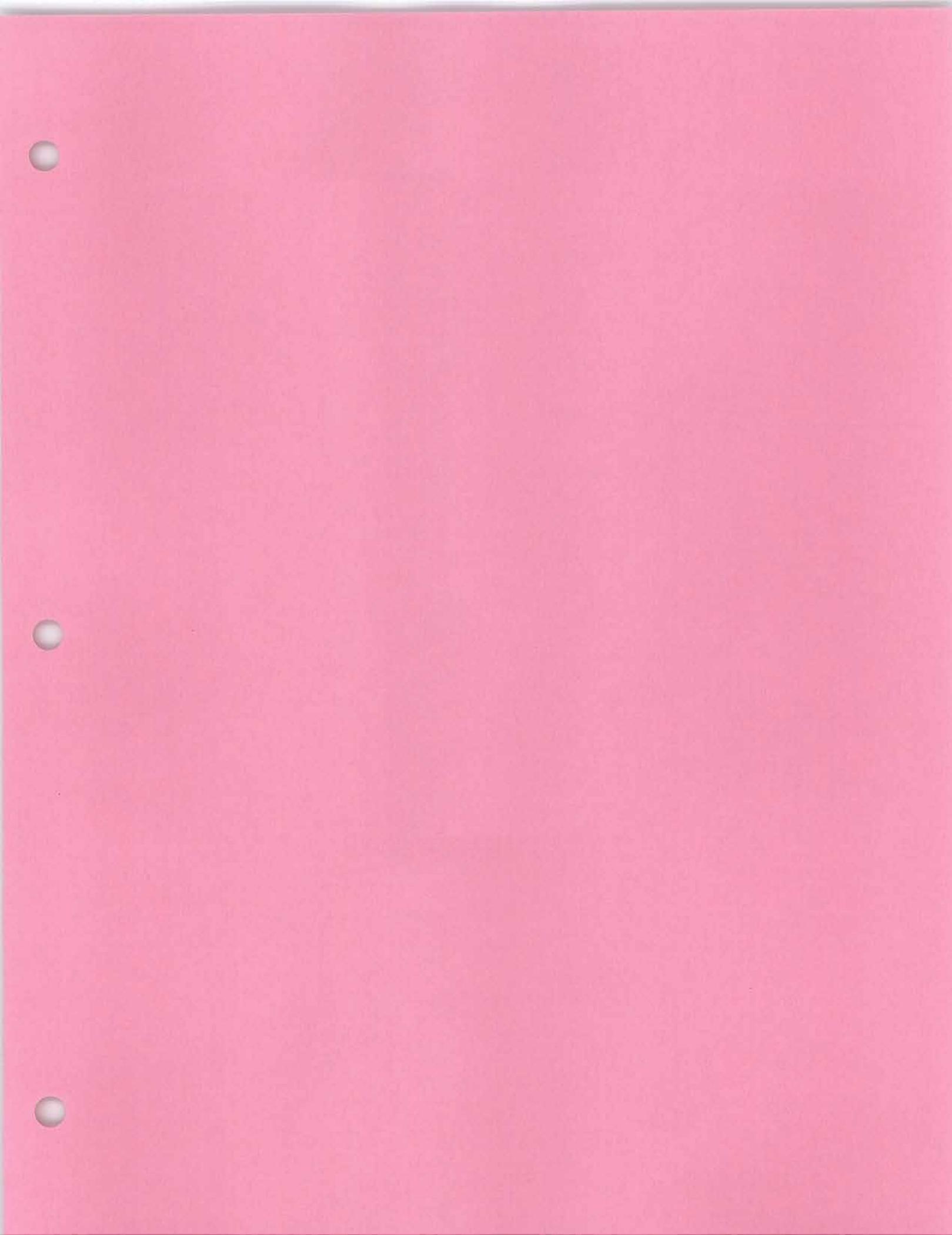
371.455 Nominees declared elected if number equals positions to be filled. After expiration of the time for filing nominations for a regular district election, if the board of directors determines that the number of candidates nominated equals the number of positions to be filled on the board, the district need not hold the election. Instead, the board of directors within 10 days after expiration of the time for filing nominations shall declare the candidate or candidates elected. [Amended by 1955 c.227 §3; 1971 c.647 §74; 1983 c.350 §245]

371.460 [Amended by 1963 c.364 §2; repealed by 1971 c.647 §149]

371.465 [Repealed by 1971 c.647 §149]

371.467 Special elections. Special elections may be called by resolution of the board of directors for any proper purpose. [1963 c.364 §1; 1971 c.647 §75]

371.470 Selection of board of directors' president and secretary; record of proceedings; meetings. (1) Within the first 30 days of July in each year next following the



to recover actual damages or \$1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(b) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action under this section.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c.517 §9; 1981 c.897 §2; 1995 c.696 §18]

192.595 Severability. If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c.517 §10]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a

quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; disabled access; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emer-

gency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.18. §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to a document discussed at the meeting but such reference shall not affect the status of the document under ORS 192.410 to 192.505.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound tape recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) Nothing contained in ORS 192.610 to 192.690 shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding offi

cer has identified the authorization under ORS 192.610 to 192.690 for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office.

(B) The filling of a vacancy on any public committee, commission or other advisory group.

(C) The consideration of general employment policies.

(D) The employment of the chief executive officer, other public officers, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) By a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct. Notwithstanding paragraph (b) or (c) of this subsection, subsection (5) of this section or ORS 192.650, the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of the matter investigated are governed by ORS 676.175.

(2) Labor negotiations shall be conducted in open meetings unless both sides of the negotiators request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (1)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) When a governing body convenes an executive session under subsection (1)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(5) No executive session may be held for the purpose of taking any final action or

making any final decision. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section

and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of state or local

lawyers assistance committees operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health Sciences University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health Sciences University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was added to and made a part of ORS chapter 192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions. (1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means a financial institution or a trust company, as those terms are defined in ORS 706.008.

(3) "Financial records" means any original written document, any copy thereof, or any information contained therein, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1; 1997 c.631 §423]

192.805 Reimbursement required prior to disclosure; charges. Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be deemed reasonable costs:

(1) Personnel costs, \$10 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(Distribution)

192.270 Definitions for ORS 192.270 and 192.275. As used in ORS 192.270 and 192.275:

(1) "Public" does not include any state officer or board, commission, committee, department, institution, branch or agency of state government to which a report is specifically required by law to be submitted but does include any such to which a copy is sent for general informational purposes or as a courtesy.

(2) "Report" means informational matter published as a report or other document by a state agency but does not include an order as defined in ORS 183.310.

(3) "State agency" means any state officer or board, commission, department, institution or agency of the executive, administrative or legislative branches of state government. [1993 c.181 §1]

Note: 192.270 and 192.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or 457 series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.275 Notice when report required; content; effect. Notwithstanding ORS 192.230 to 192.245, if any state or federal law requires a state agency to send, mail or submit a report to the public, the state agency may meet this requirement by mailing notice of the report to the public. The notice shall state that if the recipient returns an attached or enclosed postcard to the state agency, the state agency will supply a copy of the report. The postcard may contain a checkoff to indicate whether the person wants to continue receiving a copy of complete reports. [1993 c.181 §2]

Note: See note under 192.270.

RECORDS AND REPORTS

192.310 Records and reports required by law to be in English. (1) With the exception of physicians' prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class B misdemeanor. [1971 c.743 §294]

INSPECTION OF PUBLIC RECORDS

192.410 Definitions for ORS 192.410 to 192.505. As used in ORS 192.410 to 192.505:

(1) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

(2) "Person" includes any natural person, corporation, partnership, firm or association.

(3) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(6) "Writing" means handwriting, type-writing, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4]

192.420 Right to inspect public records. (1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

(2)(a) If a person who is a party to a civil judicial proceeding to which a state agency is a party, or who has filed a notice under ORS 30.275 (5)(a), asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the Attorney General in Salem.

(b) As used in this subsection, "person" includes a representative or agent of the person. [1973 c.794 §3; 1999 c.574 §1]

192.430 Functions of custodian of public records. (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute,

shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. [1973 c.794 §4; 1989 c.546 §1]

192.440 Certified copies of public records; fees; waiver or reduction. (1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) If the public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

(3) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing, compiling or tailoring such record, either in organization or media, to meet the person's request. However, when the records are those filed with the Secretary of State under ORS chapter 79, the fees for furnishing copies, summaries or compilations of such records are those established by the Secretary of State by rule, under ORS chapter 79.

(4) The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(5) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

(6) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2; 1999 c.824 §5]

192.445 Nondisclosure on request of home address and home telephone number; rules of procedure; duration of effect of request; liability; when not applicable.

(1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address or telephone number of the individual would constitute a danger to personal safety. Such evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address or personal telephone number of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section shall remain effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the

individual's voter registration, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5; 1995 c.742 §12]

Note: 192.445 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection; records of health professional regulatory boards. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. Except as provided in subsection (5) of this section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of this section, the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if the Attorney General grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as provided in subsection (6) of this section, in the circuit court of the county where the record is held. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in

part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by the Attorney General that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with the order of the Attorney General requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

(4) A person denied the right to inspect or to receive a copy of any public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the health professional regulatory board. Not more than 48 hours after the board receives a copy of the petition, the board shall send a copy of the petition by first class mail to the licensee or applicant who is the subject of any record for which disclosure is sought. When sending a copy of the petition to the licensee or applicant, the board shall include a notice informing the licensee or applicant that a written response by the licensee or applicant may be filed with the Attorney General not later than seven days after the date that the notice was sent by the board. Immediately upon receipt of any written response from the licensee or applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(5) The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting it in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall

be served by first class mail on the health professional regulatory board, the petitioner and the licensee or applicant who is the subject of any record ordered to be disclosed. The health professional regulatory board shall not disclose any record prior to the seventh day following the service of the Attorney General's order on a licensee or applicant entitled to receive notice under this subsection.

(6) If the Attorney General grants or denies the petition for a record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, the board, a person denied the right to inspect or receive a copy of the record or the licensee or applicant who is the subject of the record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(7) The Attorney General may comply with a request of a health professional regulatory board to be represented by independent counsel in any proceeding under subsection (6) of this section. [1973 c.794 §6; 1975 c.308 §2; 1997 c.791 §8; 1999 c.751 §4]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for it. [1973 c.794 §7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining

whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460. [1975 c.308 §5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting the Attorney General or district attorney to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

_____ (date)

I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)
2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person(s):

1. _____
(Name of public officer or employee; title or position, if known)
2. _____
(Name of public officer or employee; title or position, if known)

_____ (Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the con-

sent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [1973 c.794 §10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [1973 c.794 §8]

192.490 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may

in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [1973 c.794 §9; 1975 c.308 §3; 1981 c.897 §40]

192.495 Inspection of records more than 25 years old. Notwithstanding ORS 192.501 to 192.505 and except as otherwise provided in ORS 192.496, public records that are more than 25 years old shall be available for inspection. [1979 c.301 §2]

192.496 Public records exempt from disclosure because of age; student records. The following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [1979 c.301 §3]

192.500 [1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 §41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 §400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 §92; 1981 c.905 §7; 1983 c.17 §29; 1983

c.198 §1; 1983 c.338 §902; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9; 1985 c.413 §1; 1985 c.602 §13; 1985 c.657 §1; 1985 c.762 §179a; 1985 c.813 §1; 1987 c.94 §100; 1987 c.109 §3; 1987 c.320 §145; 1987 c.373 §23; 1987 c.520 §12; 1987 c.610 §24; 1987 c.731 §2; 1987 c.839 §1; 1987 c.898 §26; repealed by 1987 c.764 §1 (192.501, 192.502 and 192.505 enacted in lieu of 192.500)

192.501 Public records conditionally exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure thereof would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005 by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property used or owned by a public body;

(b) Identify those areas of structural or operational vulnerability that would permit

unlawful disruption to, or interference with, the services provided by a public body; or

(c) Disrupt, interfere with or gain unauthorized access to information processing, communication or telecommunication systems, including the information contained therein, that are used or operated by a public body;

(23) Records or information that would reveal the security measures taken or recommended to be taken to protect:

(a) An officer or employee of a public body;

(b) Buildings or other property used or owned by a public body;

(c) Information processing, communication or telecommunication systems, including the information contained therein, that are used or operated by a public body; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);

(24) Writings prepared by or under the direction of officials of Oregon Health Sciences University about a person and the person's potential interest in donating money or property to the university or the person's actual donation unless disclosure is authorized by the person; and

(25) Records of the name and address of a person who files a report with or pays an assessment to a council, board or commission created or organized under ORS chapter 576, 577, 578 or 579. As used in this subsection, "council, board or commission" does not include the advisory board established under ORS 576.810. [1987 c.373 §§23c,23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §§11,13; 1989 c.1083 §10; 1991 c.636 §§1,2; 1991 c.678 §§1,2; 1993 c.616 §§4,5; 1993 c.787 §§1,2; 1995 c.604 §§2,3; 1999 c.155 §3; 1999 c.169 §§1,2; 1999 c.234 §§1,2; 1999 c.291 §§21,22; 1999 c.380 §§1,2; 1999 c.1093 §§3,4]

192.502 Other public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public

interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption does not apply:

(A) To such employees or volunteers if they are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; or

(C) To a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member.

(b) Nothing in this subsection exempting employee records from disclosure relieves a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and ORS 238.410.

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Resource and Technology Development Account or the Oregon Resource and Technology Development Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or

services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department

of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(20) Sensitive business records or financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.

(21) Records of Oregon Health Sciences University regarding candidates for the position of president of the university.

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

(23) The following records, communications and information submitted to the Housing and Community Services Department by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence requested to be confidential.

(k) Tenant files relating to certification.

(L) Housing assistance payment requests.

(24) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that

is not otherwise required by law to be submitted.

(25) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(26) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Personally identifiable information about customers of a municipal electric utility or a people's utility district. The utility or district may, however, release such information to a third party if the customer consents in writing or electronically, if the disclosure is necessary to render utility or district services to the customer, or if the disclosure is required pursuant to a court order. The utility or district may charge as appropriate for the costs of providing such information. The utility or district may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(28) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(29) Except under the provisions of section 8 (2), chapter 1059, Oregon Laws 1999, pesticide sales or use reporting data obtained by the State Department of Agriculture exclusively under the provisions of sections 2 to 9, chapter 1059, Oregon Laws 1999, that would reveal the identity or specific location of the owner or lessee of a specific property where a pesticide has been applied for a private agriculture or forestry production operation, or other nonpublic facility on private

property. Nothing in this subsection shall limit the use that may be made of such information for regulatory purposes or its admissibility in any enforcement proceedings.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors. [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1; 1995 c.79 §70; 1995 c.162 §62a; 1995 c.604 §1; 1997 c.44 §1; 1997 c.559 §1; 1997 c.825 §1; 1999 c.274 §17; 1999 c.291 §24; 1999 c.379 §1; 1999 c.666 §1; 1999 c.683 §3; 1999 c.811 §2; 1999 c.855 §4; 1999 c.955 §23; 1999 c.1059 §12]

Note: The amendments to 192.502 by section 16, chapter 1059, Oregon Laws 1999, become operative December 31, 2009. See section 19, chapter 1059, Oregon Laws 1999. The text that is operative on and after December 31, 2009, is set forth for the user's convenience.

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption does not apply:

(A) To such employees or volunteers if they are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; or

(C) To a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member.

(b) Nothing in this subsection exempting employee records from disclosure relieves a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prej-

udice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and ORS 238.410.

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Resource and Technology Development Account or the Oregon Resource and Technology Development Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to liti-

gation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(20) Sensitive business records or financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.

(21) Records of Oregon Health Sciences University regarding candidates for the position of president of the university.

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

(23) The following records, communications and information submitted to the Housing and Community Services Department by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence requested to be confidential.

(k) Tenant files relating to certification.

(L) Housing assistance payment requests.

(24) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(25) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(26) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Personally identifiable information about customers of a municipal electric utility or a people's utility district. The utility or district may, however, release such information to a third party if the customer consents in writing or electronically, if the disclosure is necessary to render utility or district services to the customer, or if the disclosure is required pursuant to a court order. The utility or district may charge as appropriate for the costs of providing such information. The utility or district may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(28) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(29) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

192.503 [1993 c.224 §3; repealed by 1997 c.678 §15]

192.505 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1987 c.764 §4 (enacted in lieu of 192.500)]

Note: The name of the Department of Human Resources has been changed to the Department of Human Services and the title of the Director of Human Resources to the Director of Human Services. The name and title changes become operative on July 1, 2000. See sections 10 and 11, chapter 421, Oregon Laws 1999. References to the department and the director in this chapter use the name and the title that become operative on July 1, 2000.

PUBLIC RECORDS POLICY

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of statewide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or non-current, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon in order to assure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds, and in order to assure the prompt destruction of records without continuing value. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State. [1973 c.439 §1; 1991 c.671 §3]

CUSTODY AND MAINTENANCE OF PUBLIC RECORDS

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public record" does not include:

(a) Records of the Legislative Assembly, its committees, officers and employees.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Records or information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905.

(d) Extra copies of a document, preserved only for convenience of reference.

(e) A stock of publications.

(f) Messages on voice mail or on other telephone message storage and retrieval systems.

(6) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employees. [1961 c.160 §2; 1965 c.302 §1; 1983 c.620 §11; 1989 c.16 §1; 1999 c.55 §1; 1999 c.140 §1]

192.010 [Repealed by 1973 c.794 §34]

192.015 Secretary of State as public records administrator. The Secretary of State is the public records administrator of this state, and it is the responsibility of the secretary to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. [1973 c.439 §2]

192.020 [Repealed by 1973 c.794 §34]

192.030 [Amended by 1961 c.160 §4; repealed by 1973 c.794 §34]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate. [Amended by 1961 c.160 §5]

192.050 Copying records; evidentiary effect. A state agency or political subdivision may, with the approval of the proper budgetary authority, cause any public records in its official custody to be photocopied or captured by digital imaging system as in the case of original filings or recordings or recorded by means of analog or digital audio and video tape technology. Each photocopy, digital image and analog or digital audio and video tape shall be made in accordance with the appropriate standard as determined by the State Archivist. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may be, of the original. [Amended by 1961 c.160 §6; 1991 c.671 §4]

192.060 Indexing and filing copied records. All photocopies, digital images and analog or digital audio and video tapes made under ORS 192.040 and 192.050 shall be properly indexed and placed in conveniently accessible files. Each roll of microfilm shall be deemed a book or volume and shall be designated and numbered and provision shall be made for preserving, examining and using the same. [Amended by 1961 c.160 §7; 1991 c.671 §5]

192.070 Duplicate rolls of microfilm required; delivery to State Archivist. A duplicate of every roll of microfilm of documents recorded pursuant to law and the indexes therefor shall be made and kept safely. The State Archivist upon request may, pursuant to ORS 357.865, accept for safekeeping the duplicate microfilm. [Amended by 1961 c.160 §8]

192.072 State Archivist performing microfilm services for political subdivision or state agency. (1) As used in this section:

(a) "Political subdivision" includes a city, county, district and any other municipal or public corporation in Oregon.

(b) "State agency" includes any state officer, department, board, commission or court, the Legislative Assembly, its committees, officers and employees.

(2) Upon request of a state agency or political subdivision, the State Archivist may perform microfilm services for the state agency or political subdivision. The cost of rendering the microfilm services shall be paid to the State Archivist by the state agency or political subdivision. The moneys received under this section shall be deposited with the State Treasurer who shall give a receipt therefor. All such moneys are continuously appropriated for the payment of expenses incurred by the Secretary of State in the administration of the office of the

State Archivist. [1955 c.87 §1; 1961 c.172 §3; 1973 c.439 §8]

192.074 [1955 c.87 §2; repealed by 1961 c.172 §7]

192.076 [1955 c.87 §3; repealed by 1961 c.172 §7]

192.080 [Amended by 1961 c.160 §9; repealed by 1971 c.508 §4]

192.090 [Repealed by 1961 c.160 §24]

192.100 [Repealed by 1961 c.160 §24]

192.105 State Archivist authorization for state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; child abuse reports; limitations; records officer; standards for State Records Center. (1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision, as defined in ORS 192.072, specific or continuing authorization for the retention or disposition of public records which are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records. In order to protect and preserve the private legal rights of a person who as a minor was the subject of a record relating to child abuse and foster home placement and supervision, and to retain such a record for use in any subsequent counseling required by such a person, the State Archivist shall retain all records of the State Office for Services to Children and Families that relate to child abuse for:

(a) 75 years if the abuse is substantiated; and

(b) 30 years if the abuse is unsubstantiated.

(2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The

county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c.244 §1; 1961 c.160 §10; subsection (3) enacted as 1961 c.150 §5; 1971 c.508 §1; 1977 c.146 §1; 1991 c.671 §6; 1993 c.660 §1; 1999 c.59 §43]

192.110 [Amended by 1961 c.160 §11; repealed by 1971 c.508 §4]

192.120 [Repealed by 1971 c.508 §4]

192.130 Disposition of valueless records in custody of State Archivist; notice prior to disposition. If the State Archivist determines that any public records of a state agency or political subdivision in the official custody of the State Archivist prove to have insufficient administrative, legal or research value to warrant permanent preservation, the State Archivist shall submit a statement or summary thereof to the records officer of the state agency or political subdivision, or successor agency or body, certifying the type and nature thereof and giving prior notification of the destruction. [Amended by 1961 c.160 §12; 1971 c.508 §2; 1991 c.671 §7]

192.140 [Amended by 1961 c.160 §13; repealed by 1977 c.146 §2]

192.150 [Amended by 1961 c.160 §14; repealed by 1977 c.146 §2]

192.160 [Amended by 1961 c.160 §15; repealed by 1977 c.146 §2]

192.170 Disposition of materials without authorization. The destruction or other disposal of the following materials do not require specific authorization:

(1) Inquiries and requests from the public and answers thereto not required by law to

be preserved or not required as evidence of a public or private legal right or liability.

(2) Public records which are duplicates by reason of their having been photocopied.

(3) Letters of transmittal and acknowledgment, advertising, announcements and correspondence or notes pertaining to reservations of accommodations or scheduling of personal visits or appearances. [Amended by 1961 c.160 §16; 1971 c.508 §3]

192.190 Consular corps credentials as public records; duties of Secretary of State; fees. (1) Subject to such rules as the Secretary of State may adopt, the secretary may accept and file as a public record the credentials of a member of the consular corps if that member's jurisdiction includes the State of Oregon.

(2) The Secretary of State may certify as to the official character and the genuineness of the signature of a member of the consular corps whose credentials have been accepted and filed under subsection (1) of this section.

(3) Fees for the filing of credentials and the issuance of certificates under this section shall be established by the Secretary of State pursuant to ORS 177.130. [1983 c.232 §1]

PUBLIC REPORTS (Standardized Form)

192.210 Definitions for ORS 192.210 and 192.220. As used in ORS 192.210 and 192.220 unless the context requires otherwise:

(1) "Issuing agency" means:

(a) Every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid from public funds and includes the Legislative Assembly, the officers and committees thereof, and the courts and the officers and committees thereof; or

(b) Any county, special district, school district or public or quasi-public corporation.

(2) "Printing" includes any form of reproducing written material.

(3) "Report" means any report or other publication of an issuing agency that is required by law to be submitted to the public or to a receiving agency.

(4) "Receiving agency" means any state officer or state board, commission, department, institution or agency or branch of government that is required by law to receive any report from an issuing agency. If the branch of government is the Legislative Assembly, the receiving agency is the Legislative Administration Committee and if the branch is the judicial branch, the receiving

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Oregon Administrative Rules

SECRETARY OF STATE, ARCHIVES DIVISION

DIVISION 103

GENERAL SCHEDULES

166-103-0005

Facilitative/Housekeeping Records

Facilitative/housekeeping records may be found at all levels of county and special district government. Records relating to the administrative, fiscal, payroll, personnel, and property functions may be retained centrally or in individual offices, depending on local administrative structure.

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0010

Administrative

This General Schedule is applicable to the administrative records of counties and special districts. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

(1) Activity Reports, General Daily, weekly, monthly, or similar reports documenting the activities of employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. (Minimum retention: 2 years)

(2) Annual Reports Reports documenting the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. (Minimum retention: Permanent)

(3) Calendars and Scheduling Records Records documenting and facilitating routine planning, scheduling, and similar actions related to meetings, appointments, trips, visits, and other activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records which contain significant information that is not summarized or otherwise included in reports or similar documents. (Minimum retention: 1 year)

- (4) Charter Constitution, bylaws, and all amendments to agency charters approved by the State Legislature. Generally includes original charter, amendments, and related significant records. (Minimum retention: Permanent)
- (5) Codes Codified ordinances passed by the agency. Provides reference to all laws for both information and enforcement. Information may include ordinance numbers, amending ordinance numbers, code numbers, and text. (Minimum retention: Permanent)
- (6) Conference and Seminar Records Records documenting the attendance at, or development of, seminars, conferences, workshops, conventions, and similar gatherings. May be sponsored by the agency or by another entity. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. (Minimum retention: 2 years)
- (7) Contracts, Leases, and Agreements Documents the duly executed and binding contractual agreements between the agency and other parties. May include contracts, exhibits, bid documents, change orders, proposals, and significant related correspondence. Types of contracts include purchase of equipment and supplies, interagency, personal service, capital construction (documenting building construction, alterations, or repair), grant funding, and others. Information in contracts usually includes contract number, certificate of required insurance, dates, terms, parties involved, period covered, and signatures. (Minimum retention: (a) Construction contract records: 10 years after substantial completion, as defined by ORS 12.135(3); (b) Other contracts, leases and agreements: 6 years after expiration) Caution: Agencies who enter into contracts with the federal government must ensure that their contracts and agreements meet federal requirements specified in the Code of Federal Regulations.
- (8) Correspondence, Ephemeral Series documents communications received or sent which do not contain significant information about a county's programs (Correspondence, Program), fiscal status (Correspondence, Financial), or routine agency operations (Correspondence, General). Records include, but are not limited to, advertising circulars, drafts and worksheets, desk notes, memoranda, and other records of a preliminary or informational nature. (Minimum retention: Retain until read)
- (9) Correspondence, General Series documents communications received or sent which do not contain significant information about an agency's programs. Records include letters sent and received, memoranda, notes, transmittals, acknowledgments, community affair notices, charity fund drive records, routine requests for information or publications, enclosures, and attachments. For records which do add significant information to the program or primary functional responsibility of the office, see Correspondence, Program in this section. (Minimum retention: 1 year)
- (10) Correspondence, Policy and Historical Correspondence, memoranda, and similar records which state or form the basis of policy, set important precedents, or record historic events related to the organization or operation of the agency. Includes letters sent and received, memoranda, notes, reports, studies, and other records. SEE ALSO other correspondence series for records that do not document policy or historical events. (Minimum retention: Permanent)
- (11) Correspondence, Program Correspondence, memoranda, and similar records which document and add significant information to the program or primary functional responsibility of the office. Includes letters sent and received, memoranda, notes, and other records related to specific programs or primary functions. SEE ALSO Correspondence, General for correspondence and similar records which do not add significant information to a program or primary function of the office. (Minimum retention: Retain for the same period as the program or functional record series to which it relates (e.g., Civil Case Files, Insurance Policy Records, etc.))
- (12) Drafts and Worksheets Records of a preliminary or working nature which do not represent significant steps in the preparation of final copy documents. Includes informal notes, preliminary drafts of letters, memoranda, reports, worksheets, and related records. Worksheets or similar records prepared solely for the purpose of facilitating the input of information into a computer may be considered part of this record series, if not subject to audit requirements. Also includes computer outputs used only to verify information entered into a computer and not considered final copy documents after this use. (Minimum retention: Retain as needed)
- (13) Legislative Tracking Records Series used to monitor legislation which may have an impact on an agency's current operations or policies. Records include concept statements, proposals, bill logs, fiscal/organizational impact analysis papers, copies of bills, testimony summaries, committee reports, agendas, and correspondence. (Minimum retention: 2 years)
- (14) Mailing Lists Lists compiled to facilitate billing, community outreach, and other functions of the agency. Information usually includes name of individual or group, address, name and title of contact person, phone number, comments, and similar data. (Minimum retention: Until superseded or obsolete)

(15) Meeting Records, Board, Commission, and Committee Records documenting the proceedings of county boards, commissions, task forces, committees, advisory councils, and other similar group, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710). Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, audio or visual recordings, correspondence, and related documentation. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in agency records): Permanent; (b) Audio or visual recordings: 1 year after minutes prepared; (c) Other records: 5 years)

(16) Meeting Records, Governing Body Records documenting the proceedings of any regularly scheduled, special, executive session, or emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710), that is under agency jurisdiction. These typically consist of boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, meeting packets, tape recordings, and related documentation and correspondence. SEE ALSO Meeting Records, Staff and Meeting Records, Board, Commission, and Committee in this section. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in county records): Permanent; (b) Audio or visual recordings: 1 year after minutes prepared; (c) Other records: 5 years)

(17) Meeting Records, Staff Records documenting meetings within government which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.710). These routine staff meetings deal with tasks and actions within existing policies and procedures. Records may include minutes, notes, reports, and related items. Some records may merit inclusion in other record series with longer retention periods if the subject matter of the meeting adds significant information to that series. (Minimum retention: 2 years)

(18) News/Press Releases Prepared statements, announcements, news conference transcripts, and similar records issued to the news media. Subjects include the adoption of new programs, termination of old programs, policy shifts, changes in the status of elected officials or senior administrative personnel, and others. Also may include news releases announcing routine events or actions carried out within the scope of existing policies. (Minimum retention: (a) Policy and historic news/press releases: Permanent; (b) Routine news/press releases: 2 years)

(19) Oaths of Office Signed oaths taken by various elected and appointed officials before discharging duties of office. Information typically includes date, name, office held, text, and signatures. (Minimum retention: 6 years after most recent oath)

(20) Ordinances Legislative action of the agency to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct, or condition authorized by Oregon Revised Statutes. Ordinances typically include a title, preamble, ordaining clause, subject clause, penalty for violation (when applicable), effective date, authorizing signature and seal. May also include indexes, calendars, and documentation presented to support action. SEE ALSO Meeting Records, Governing Body (Minimum retention: Permanent)

(21) Organizational Records Records documenting the arrangement and administrative structure of the agency. Includes charts, statements, studies, and similar records. May also include studies to determine the merit and feasibility of reorganization plans, as well as other major studies related to the administrative hierarchy. (Minimum retention: 2 years after superseded)

(22) Permit and License Records, Agency Issued Records documenting agency review, background investigations, recommendations and other actions related to permits and licenses issued for various activities not specified elsewhere in this general schedule. Permits may include but are not limited to those for taxi cab drivers, dances, parades, rocket launching, second hand dealers, alarm system dealers, liquor licenses, keeping livestock, and solicitors. Usually includes applications, background investigation reports, permits, licenses, and related records. (If a specific permitting function is included in another records series under a program or functional area such as public works or law enforcement in this general schedule, the retention period specified in that program or functional area supersedes the retention period listed in this series.) (Minimum retention: 2 years after expiration, revocation, or denial)

(23) Planning Records Series documents long-range plans and the development of an agency's mission statement and work objectives. Records include strategic plans, mission statements, preliminary drafts, work notes, and related correspondence. (Minimum retention: (a) Mission Statements and plans: 20 years; (b) Other records: 5 years)

(24) Policy Statements and Directives Series documents review, assessment, development, and authorization of an agency's policies and procedures. Records may include authorizing bulletins and advisories, mission and goal statements, manuals, and final policy statements and directives. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. (Minimum retention: 20 years after superseded)

- (25) **Postal Records** Records documenting transactions with the U.S. Postal Service and private carriers. Includes postage meter records, receipts for registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and related items. (Minimum retention: 2 years)
- (26) **Professional Membership Records** Records documenting institutional or agency-paid individual memberships and activities in professional organizations. (Minimum retention: 2 years)
- (27) **Public Notice Records** Records documenting compliance with laws requiring public notice of government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. (Minimum retention: 3 years)
- (28) **Publications** Published records produced by or for the agency or any of its departments or programs and made available to the public. Includes newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. (Minimum retention: (a) Policy and historic publications: Permanent; (b) All others: Until superseded or obsolete)
- (29) **Requests and Complaints** Records documenting complaints or requests concerning a variety of agency responsibilities not specified elsewhere in this general schedule. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. [If a specific request or complaint is listed in another records series under a functional area such as law enforcement in this general schedule, the retention period specified in that functional area supersedes the retention period listed in this series.] (Minimum retention: 2 years after last action)
- (30) **Resolutions** Formal statements of decisions or expressions of opinions adopted by the agency. Information includes date, number, and text. SEE ALSO Meeting Records, Governing Body (Minimum retention: Permanent)
- (31) **Routing and Job Control** Records Records used to control the routine flow of documents and other items and actions in and between offices in the agency. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. (Minimum retention: 1 year)
- (32) **Scheduling** Records Records documenting scheduling and reservations related to public participation in and use of various activities, events, classes, and meeting rooms. Includes schedules, logs, lists, requests, and similar records. (Minimum retention: 1 year)
- (33) **Scrapbooks** Books documenting a chronological or similar record of the agency. May contain photographs, newspaper or magazine clippings, commentaries, and other items pertaining to the activities, actions, and reactions of the agency officials, personnel, and citizens. (Scrapbooks vary greatly in their content and value. Some may have historic value. For appraisal assistance, contact the State Archives.) (Minimum retention: (a) Scrapbooks which record historic events related to the organization or operation of the agency: Permanent; (b) Other scrapbooks: Retain as needed)
- (34) **Security** Records Series documents security provided for agency buildings and grounds. Records include security logs, sign-in sheets, security reports, incident reports, and related records. (Minimum retention: 2 years)
- (35) **Seminar and Conference Records, Agency-Sponsored** Records documenting the design and implementation of agency sponsored seminars, conferences, workshops, conventions, and similar gatherings. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. For records documenting registration billings and related fiscal actions, see Financial section. (Minimum retention: (a) Significant program records: 5 years; (b) Class enrollment and attendance records: 2 years; (c) Other records: 1 year)
- (36) **Seminar and Conference Records, Non-Agency Sponsored** Records documenting activities of seminars, conferences, workshops, conventions, and similar gatherings not sponsored by the agency but attended by agency officials or personnel. May include staff reports, instructional materials, recommendations, related correspondence and memoranda, and similar records. (Minimum retention: 2 years)
- (37) **Signature Authorizations** Records documenting the authorization of designated employees to sign fiscal and contractual documents. Useful as an aid for management control over expenditures. Information usually includes authorization date, name, sample signature, position, remarks, conditions, and related data. (Minimum retention: 6 years after authorization superseded or expired)

(38) Special Event and Celebration Records Records documenting agency-sponsored celebrations of special and historic occasions such as centennials, pioneer days, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other significant aspects of the celebration. These significant records may include studies, publications, photographs, attendance summaries, final reports, and other significant documents. This series also includes routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, memoranda, volunteer information, and related records. (Minimum retention: (a) Records documenting significant aspects of the event: Permanent; (b) Other records: 2 years after event)

(39) Surveys, Polls, and Questionnaires Records documenting the measurement of public opinion by or for the agency related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and significant related records. Examples of summaries include studies which incorporate the significant results of public opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for agency service, and other records which distill survey data into summary form. (Minimum retention: (a) Summary reports and abstracts: 5 years; (b) Other records: Until summary report is completed or 5 years, whichever is sooner)

(40) Work Orders Records documenting requests and authorizations, according to existing contracts or agreements, for needed services and repairs to agency property and equipment. May include copy center work orders, printing orders, telephone service and installation requests, repair authorizations, and similar records. (Minimum retention: 2 years)

(41) Work Schedules and Assignments Records documenting the scheduling and assigning of shifts, tasks, projects, or other work to agency employees. Useful for budget and personnel planning and review, assessing employee work performance, and other purposes. May include calendars, schedules, lists, charts, rosters, and related records. (Minimum retention: (a) Records designed and used to assess employee performance: 3 years; (b) Other records: 1 year)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0015

Emergency Management Records

This General Schedule is applicable to the records of counties and special districts relating to emergency preparedness and actions during an emergency. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

(1) Alert and Notification Records Records documenting any written emergency warnings/notifications issued by the county, the Oregon Emergency Management Division, National Oceanic and Atmospheric Agency (NOAA), or the Federal Emergency Management Agency (FEMA). Subjects may include landslides, earthquakes, windstorms, floods, fires, and other hazards. (Minimum retention: 2 years)

(2) Civil Preparedness Guidance (CPG) and State and Local Guide (SLG) Records Records issued by the Federal Emergency Management Agency (FEMA) to provide guidance to state and local agencies on appropriate elements of emergency management programs. These guidelines (known as CPGs or SLGs) provide mandatory policies and procedures for federally funded emergency management programs. (Minimum retention: Until superseded or obsolete)

(3) Disaster Preparedness Planning and Recovery Records Records documenting plans and procedures for the continuity of government in case of a major disaster which has destroyed or compromised the operations of the agency. Components of the recovery plan include but are not limited to physical plant repair and restoration; equipment restoration; electronic data restoration including steps to reload data, recover data, and reconnect networks; reestablish telephone connections; essential records protection; and related procedures and needs dealing with risk management, public relations, and financial issues. (Minimum retention: Until superseded)

(4) Emergency Exercise Records Records documenting emergency training exercises performed on a regular basis, as required by the State and Local Assistance and Emergency Management Assistance Programs. Documentation usually includes statements of purpose, scenario narratives, major and detailed sequences of events, messages and inputs (simulation material), evaluation points, critique and follow-up actions reports, lists of players, and names of controllers

and evaluators. (Minimum retention: 4 years after annual or final expenditure report submitted)

(5) Emergency and Disaster Incident Records Records documenting actions taken with respect to emergency planning and response activities during and after emergency incidents. Used for planning, analysis, and reference. Types of incidents may include floods, storms, hazardous material releases, fires, public utility failures, earthquakes, and others. Records often include photographs, damage reports, response reports, incident action plans, resource ordering and tracking records, financial documentation, logs, messages, notes, and related documents. (Minimum retention: (a) Designated or declared emergencies: Permanent; (b) Non designated emergencies: 5 years)

(6) Emergency Management Assistance Activity Reports Reports documenting the agency's emergency management work plan. These are created on a quarterly basis as required by the Federal Emergency Management Agency (FEMA). The reports provide a narrative of emergency management program elements that were accomplished annually, along with supporting documentation (samples of completed work). Subjects include personnel, equipment, current projects, progress reports, training, and others. (Minimum retention: 3 years after annual or final expenditure report submitted)

(7) Emergency Management Assistance Expense Records Records documenting a breakdown of the agency's emergency management program expenses that are eligible for federal matching funds under the Emergency Management Assistance (EMA) program. Summaries are submitted to the Oregon Emergency Management Division annually. They identify the broad categories of emergency management program expenditure as "Personnel, Travel, and Other." Records include appropriate Federal Emergency Management Agency (FEMA) forms, copies of EMA checks issued by the state to the agency as part of the pass-through funding procedure, and related documents. (Minimum retention: 3 years after annual or final expenditure report submitted)

(8) Emergency Management Assistance Fiscal Reports Records documenting fiscal reports submitted to Oregon Emergency Management Division, to receive federal matching funds under the Emergency Management Assistance (EMA) program. Reports document all funds spent by the agency on emergency management functions. Records include appropriate federal forms and related documents. (Minimum retention: 3 years after annual or final expenditure report submitted)

(9) Emergency Management Assistance Staff Pattern Records Records documenting the agency's personnel involved in the emergency management program. It is submitted annually to the Oregon Emergency Management Division and is the basis for determining eligibility for funded staffing support for Emergency Management Assistance jurisdictions. Records include appropriate Federal Emergency Management Agency (FEMA) forms and related documents. (Minimum retention: 3 years after annual or final expenditure report submitted)

(10) Emergency Management Board Meeting Records Records documenting the proceedings of the boards, commissions, or advisory councils that oversee or advise emergency management functions in the agency, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710). May include minutes, agendas, exhibits, resolutions, staff reports, indexes, tape recordings, and related documentation and correspondence. Subjects often include training, emergency assistance requests, systems development, policies and procedures, technical advances, and others. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in agency records): Permanent; (b) Audio or visual recordings: 1 year after minutes prepared; (c) Other records: 5 years)

(11) Emergency Operations and Management Plans Records documenting the development, implementation, and updating of emergency operations and management plans. The plans are required by the federal government as part of a Comprehensive Cooperative Agreement (CCA) and must be reevaluated and updated at least every four years. Records often include adopted plans, notes, outlines, drafts, correspondence, and related documents. SEE ALSO Disaster Preparedness Planning and Recovery Records in this section. (Minimum retention: (a) Adopted plans: Permanent; (b) Other records: 3 years after annual or final expenditure report submitted)

(12) Hazard Analysis Records Records documenting potential natural and man-made hazards in an area. The Federal Emergency Management Agency (FEMA) requires documentation for federally funded Emergency Management Assistance jurisdictions. Types of hazards include earthquakes, droughts, fires, floods, nuclear incidents, and others. Records include government forms and related documents. Information includes geographic descriptions of locations, definitions of hazards, vulnerability identifications, hazard histories, potential maximum threats, probabilities, and related data. (Minimum retention: 30 years)

(13) Hazard Shelter Records Records documenting the condition of buildings designated to be used as hazard shelters in case of emergency. Used for emergency planning and reference. Records may include documents issued by federal and state emergency management agencies, as well as related materials such as sketches and photographs. Information usually includes address, building name, structural dimensions, building composition, potential occupancy, inspection results, and related data. (Minimum retention: Until superseded or obsolete)

(14) Public Education Program and Publications Records Records related to the design and implementation of emergency

management educational and outreach programs and presentations provided to the public by the agency. Often includes class descriptions, instructional materials, course outlines, class enrollment and attendance records, reports, speeches, audio-visual records, brochures, pamphlets, booklets, newsletters, and related documents. (Minimum retention: (a) Reports, booklets, newsletters, and speeches: Permanent; (b) Brochures, pamphlets, and leaflets: Until superseded or obsolete; (c) All other records: 5 years)

(15) Resource Lists Lists documenting emergency resources such as manpower, equipment, supplies, and services. Includes names, daytime and nighttime phone numbers, and addresses of suppliers and vendors as well as contact names. (Minimum retention: Until superseded or obsolete)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0020

Equipment and Property Records

This General Schedule is applicable to the equipment and property records of a county or special district. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule before disposing of records.

(1) Annexation Records Records documenting the annexation of areas into boundaries. Used to fulfill legal requirements and document the acquisition process. May include staff reports, petitions, service district withdrawal records, surveys, boundary commission recommendations and judgments, census reports, franchise notices, maps, and important related correspondence and memoranda. (Minimum retention: Permanent)

(2) Building Records Series documents building configuration and may also document real property equipment installed, hazardous chemicals used, radiation hazards housed in the building, and emergency response procedures. Records may include as-builts, remodeling, major repair, and engineering blueprints, chemical identification data, and safety materials such as copies of Material Safety Data Sheets (MSDS). (Minimum retention: Life of structure)

(3) Damaged/Stolen Property Records Used to prepare reports relating to damaged or stolen property. Records may include yearly risk report, restoration fund inventory report, policy manual, property transfer report, self-insurance manual, real property report, money and negotiable securities report and a general risk survey. (Minimum retention: 4 years)

(4) Deeds to Agency-owned Land Recorded evidence of agency ownership of public lands and right-of-ways. Exhibits may include maps and legal descriptions, title transfers, and significant related correspondence. Information typically includes a description of property, signatures of previous owner and agency representative, and date of transfer. (Minimum retention: Permanent)

(5) Easements Recorded grants by property owners to the agency for the use of private property for public uses. Examples consist of street, utility, bikeway, sewer, storm drain, and landscaping easements. May include maps or other exhibits. Information includes property owner's name and signature, location of property, type of easement, terms, and date of signing. (Minimum retention: Permanent)

(6) Equipment Maintenance Records Records may include purchase orders, lease agreements, warranties, vendor statements, service contracts, charge call bills, fax activity reports, property disposition requests, invoices for equipment repair, purchase request forms, and memoranda. SEE ALSO Vehicle Maintenance Records in this section. (Minimum retention: 1 year after equipment disposed of)

(7) Equipment/Property Disposition Records Series documents the location, use, and transfer of agency-owned property and equipment. Records may include expendable property inventory listings, property disposition requests and notices, equipment transfer memoranda or forms, warranties, and correspondence. (Minimum retention: 4 years)

(8) Inventory Records Inventory records of expendable and non-expendable agency property or assets. Examples include but are not limited to buildings, real estate, vehicles, equipment, furniture, and supplies. Information often contains asset number, description, purchase order number, location of asset, date received, purchase price, replacement cost, depreciation, and related data. This record series applies to routine property control inventories. See Grant Records series

for inventories of property purchased with grant funds. (Minimum retention: (a) Non-expendable property: 2 years after superseded; (b) Expendable property: 2 years or until superseded, whichever is longer)

(9) **Property Dedication Records** Recorded dedication of private property for public uses such as transportation facilities (streets, sidewalks, bikeways) and parks. May include dedication agreements, maps, correspondence, and important related materials. (Minimum retention: Permanent)

(10) **Property Vacation Records** Recorded property vacations, including streets, alleys, easements, public utilities, subdivisions, and right-of-ways. May include petitions to vacate, maps, descriptions of property, staff reports, approval orders, and related significant correspondence. (Minimum retention: Permanent)

(11) **Vehicle Maintenance Records** Series documents agency's fleet maintenance. Records may include maintenance and repair logs, maintenance requests and work orders, gas slips, repair notices and authorizations, and related correspondence. (Minimum retention: 2 years after vehicle disposed of)

(12) **Waivers of Remonstrance Agreements** made by private citizens/property owners to forego their rights to remonstrate (oppose/protest) against certain agency actions in exchange for other considerations. Often relates to the extension of water or sewer service beyond certain areas that later may be annexed or formed into local improvement districts. Waivers usually include name and signature of grantor, location of property, purpose of document, date, and signature of agency representative. (Minimum retention: 6 years after expiration)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0025

Financial Records

This General Schedule is applicable to the financial records of counties and special districts. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-30-027 before disposing of records.

(1) **Accounts Payable Records** Records documenting payment of agency bills for general accounts excluding grants. Includes reports, invoices, statements, vouchers, purchase orders, payment authorizations, receipt records, canceled checks or warrants, and similar records. (Minimum retention: 2 years)

(2) **Accounts Receivable Records** Records documenting revenues owed to the agency by vendors, citizens, organizations, governments, and others to be credited to general accounts excluding grants. Also documents billing and collection of moneys. May include reports, receipts, invoices, awards, logs, lists, summaries, statements, and similar records. Information often includes, receipt amount, date, invoice number, name, account number, account balance, adjustments, and similar data. (Minimum retention: 2 years after collected or deemed uncollectable)

(3) **Audit Reports** Records documenting annual audits of the financial position of the agency conducted by external auditors in accordance with statutory requirements described in ORS 297.405 through 297.555. Subjects include accounting principles and methods, the accuracy and legality of transactions, accounts, etc., and compliance with requirements, orders, and regulations of other public bodies pertaining to the financial condition or operation of the agency. Information includes accountant's summary, combined financial statements, schedules, balance sheet details, comments, recommendations, and related data. (Minimum retention: Permanent)

(4) **Balance Status and Projection Reports** Reports created for internal use documenting the status of funds, bank accounts, investments, and other accountings of agency funds. Includes budget allotment and fund reconciliation reports. Also includes projection records related to future receipts and disbursements. Reports are generated on a daily, weekly, monthly, quarterly or similar basis. Information includes date, account balances, type and summary of activity, and related data. (Minimum retention: 2 years)

(5) **Bank Transaction Records** Records documenting the current status and transaction activity of agency funds held at banks. May include account statements, deposit and withdrawal slips, checks, and related records. Information includes bank and account numbers, transaction dates, beginning balance, check or deposit amount, document numbers, adjustments, description of transaction, ending balance, and related data. (Minimum retention: 2 years)

- (6) **Bankruptcy Notices Records** documenting the notification to the agency that certain individuals have filed for bankruptcy. Used to determine if the individual owes money to the agency and to file notice or claim with the court. Records may include notices of bankruptcy filings from U.S. Bankruptcy Court. Information may include debtor's name, accounts information, prepared repayment plan, and related documentation. (Minimum retention: 1 year from discharge of debt or 3 years from last action, whichever is shorter)
- (7) **Bond Authorization Records** Records documenting the authorization to finance improvements through bonded indebtedness. Includes authorizations, supporting financial documents, bond ratings, sample copies of bonds issued, and related records. (Minimum retention: 2 years after final payment)
- (8) **Bonds and Coupons, Paid Records** documenting paid bonds and coupons issued for capital improvements financed by property tax levies, special assessments, and utilities user payments. Debt types include general obligation, special assessment, water and sewer, tax allocation, and others. The paid (canceled or redeemed) bonds and coupons are received from paying agents and include bond number, maturity date, series number, interest payable date, dollar amount, sale conditions, and related information. Series includes related information contained in official transcripts. (Minimum retention: 2 years after final payment)
- (9) **Bonds Issued Registers** Registers or similar records documenting all agency bond issues and related information. Useful for ensuring accurate information about the overall indebtedness of the agency. Information often includes bond number, date paid, place of payment, maturity date, date registered, and related data. (Minimum retention: 2 years)
- (10) **Budget (Adopted) Records** documenting the final annual financial plan approved by a governing body for all agency expenditures. Information may include budget message, financial summaries, revenues and expenditures, operating programs, debt service, position and wage analysis, overhead allocations, organization charts, previous actual and budgeted amounts, and related data. (Minimum retention: Permanent)
- (11) **Budget Committee Meeting Records** Records documenting the proceedings of the committee responsible for reviewing the annual budget proposals of agency departments prior to governing body review, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710). Records often include minutes, agendas, exhibits, staff reports, tape recordings, and related documents. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in agency records): Permanent; (b) Tape recordings of meetings: 1 year; (c) Other records: 5 years)
- (12) **Budget Preparation Records** Records documenting the preparation of department budget requests presented to the specified governing body. May include staff reports, budget instructions, worksheets, surveys, allotment reports, spending plans, contingency plans, budget proposals, financial forecasting reports, and similar records. (Minimum retention: 2 years)
- (13) **Competitive Bid Records** Records documenting the publicizing, evaluation, and awarding of quoted bids to vendors and other individuals or organizations. Provides recorded evidence of accepted and rejected bids. May include bid exemption documents, bid and quote lists, notices of bid opening and award, comparison summaries, spreadsheets, tabulation worksheets, requests for proposal, bid advertising records, tally sheets, bid specifications, correspondence, and related records. (Minimum retention: (a) Accepted agency improvement bids: 10 years after substantial completion, as defined by ORS 12.135(3); (b) Other accepted bids: 6 years after bid awarded or canceled; (c) Rejected bids and bid exemptions: 2 years)
- (14) **Correspondence, Financial Correspondence, memoranda, and similar records** which add significant information about the financial status of the agency. May be useful for audits or for recovering money owed to the agency. Includes letters sent and received, memoranda, notes, and related records. (Minimum retention: (a) Accounts receivable correspondence: 2 years after collected or deemed uncollectable; (b) Other correspondence: 2 years)
- (15) **Financial Impact Analysis Records** Records documenting the financial analysis of various agency practices. Useful for planning future budget proposals. Records include reports, studies, worksheets, and similar records. Subjects may include the impact of specific ballot measures, proposals to increase permit fees, sick leave use analysis, and the agency's relationship with various utilities. (Minimum retention: 2 years)
- (16) **Financial Reports** Reports documenting the general financial condition and operation of the agency. Includes information on the value of all agency owned property and an accounting of all income and expenditures in relation to the final budget. Records may include monthly, quarterly, annual and similar reports. (Minimum retention: (a) Annual reports: Permanent; (b) Other reports: 2 years)
- (17) **General Ledgers** Records documenting the summary of accounts reflecting the financial position of the agency.

Information often includes debit, credit, and balance amounts per account, budget, fund, and department numbers, and totals for notes receivable, interest income, amounts due from other funds, federal grants received, bank loans received, cash in escrow, deferred loans received, cash, encumbrances, revenue, accounts receivable, and accounts payable, as well as other data. (Minimum retention: (a) Year end ledgers: 10 years; (b) Other general ledgers: 5 years)

(18) Grant Records Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the agency is the recipient, grantor, allocator, or administrator. Grants may come from federal or state governments or foundation and other private funding sources. Records may include but are not limited to applications including project proposals, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations concerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation. (Minimum retention: (a) Original application, amendments, and annual financial, performance, or final reports: Permanent; (b) Records documenting the purchase and/or disposal of real property: 10 years after substantial completion, as defined by ORS 12.135(3), or 3 years after final disposition, or as specified in agreement, whichever is longer; (c) Contracts not relating to the purchase and/or disposal of real property: 6 years after expiration or as specified in agreement, whichever is longer; (d) Other grant records: 3 years after annual or final expenditure report submitted or as specified in agreement, whichever is longer; (e) Unsuccessful grant applications: 2 years after rejection or withdrawal)

(19) Improvement Records, Administrative and Financial Records documenting the non-technical and financial administration of assessable and non-assessable agency improvements including local improvement districts and economic improvement districts. Records often include affidavits of posting, notices of proposed assessment, certificates of mailing, interested party letters, bid quotes, reports, and awards, expense reports, purchase orders, requisitions, cost analyses, construction and maintenance bonds and insurance, and related administrative and financial records not located elsewhere in this schedule. (Minimum retention: (a) Assessable improvements: 10 years after substantial completion, as defined by ORS 12.135(3), or 2 years after final payment of assessment by property owner, whichever is longer; (b) Non-assessable improvements: 10 years after substantial completion, as defined by ORS 12.135(3))

(20) Investment Records Records documenting and tracking various investments made by the agency. Often contains bank statements documenting investment information, journal entries, confirmations of purchase of U.S. Treasury Bills, confirmations of deposit in local investment pool, and deposit slips, correspondence, and memoranda related to specific investments. (Minimum retention: 2 years after investment ends)

(21) Property (Real) Transaction Records Records documenting acquisitions, dispositions, and reallocations of real property and right-of-ways by the agency for urban renewal projects, parks, sewers, streets, water lines, traffic signals, and other reasons. Records may include offer letters, options, agreements of short duration, staff reports, appraisal reports and reviews, inspection reports, letters of transmittal, summaries, and related records. (Minimum retention: 10 years after substantial completion, as defined by ORS 12.135(3))

(22) Purchasing Records Records documenting orders, authorizations, and evidence of receipt of the purchase of goods and services by the agency. Includes purchase orders and requests, purchase authorizations, requisitions, contract release orders, material and cost specifications, central stores or printing orders, telephone service orders, and similar records. (Minimum retention: 2 years)

(23) Subsidiary Ledgers, Journals, And Registers Records documenting details of transactions such as those related to receipts and expenditures on a daily, monthly, quarterly or similar basis. Includes journals, ledgers, registers, daybooks, and other account books that provide backup documentation to the general ledger. May include details of revenues, expenditures, encumbrances, cash receipts, warrants, and others. Information often includes date, payee, purpose, fund credited or debited, check number, and similar or related data. (Minimum retention: (a) Year end payroll register: 75 years; (b) Trust fund ledgers: 2 years after trust fund closed; (c) Other subsidiary ledgers, journals, and registers: 2 years)

(24) Travel Records (Employee) Records documenting requests, authorizations, reimbursements, and other actions related to employee travel. Includes expense reports and receipts, vouchers, requests, authorizations, and related documents. Retention applies to private vehicle usage as well. Information often includes estimated costs, prepayments, final costs, destination, method of transportation, travel dates, approval signatures, and related data. (Minimum retention: 2 years)

(25) Trust Fund Records Records documenting bequests to the agency or funds held in trust by the agency for specific parties. Used to determine trust fund spending for reporting to trustees. May include wills, other legal documents, expenditure records, chronologies, resolutions establishing trust funds by the agency, records documenting subject matter approved for purchase, acquisition lists, and related records. Some records may have historic value. (Minimum retention: 2 years after trust fund closed)

(26) Vendor Lists Lists documenting vendors providing goods and services to the agency. Information usually includes vendor name of person or company, address, and phone number, name of contact person, as well as a description of goods or services provided. (Minimum retention: Until superseded or obsolete)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 &endash; ORS 192.170 & ORS 357.805 &endash; ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0030

Information and Records Management Records

This General Schedule is applicable to the information and records management records of counties and special districts. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

(1) Computer System Maintenance Records Records document the maintenance of computer systems and are used to ensure compliance with any warranties or service contracts; schedule regular maintenance and diagnose system or component problems; and document systems backups. Records may include but are not limited to computer equipment inventories, hardware performance reports, component maintenance records (invoices, warranties, maintenance logs, correspondence, maintenance reports, and related records), system backup reports and procedures, and backup tape inventories, and related documentation. (Minimum retention: (a) Records related to system or component repair or service: Life of the system or component; (b) Records related to regular or essential records backups: 1 year after superseded or obsolete)

(2) Computer System Program Documentation Records document the addition, modification, or removal of software from a computer system. Records usually fall into six categories: 1) records that document operating systems; 2) records that document the in-house creation and modification of application programs; 3) records that document the structure and form of data sets; 4) records that document the use of commercial software packages; 5) records that document the structure of the system; and 6) records that document system-to-system communication. Records may include but are not limited to system overviews, operation logs, job listings, operator instruction manuals, system development logs, system specifications and changes (including narrative and flow chart descriptions), conversion notes, data set logs, data set inventories, data set record layouts, hard copies of tables, data dictionaries, data directories, programming logs, program specifications and changes, record layouts, user views, control program table documentation, program listings, commercial software manuals, and related correspondence and documentation. SEE ALSO Software Management Records in this section. (Minimum retention: (a) Migration plans: Until superseded; (b) System structure records: life of system; (c) Other records: 2 year after system superseded)

(3) Computer System Security Records Records documenting the security of the computer systems. Includes employee access requests, passwords, access authorizations, encryption keys, and related documentation. (Minimum retention: 3 years after superseded)

(4) Computer System Wiring Records Records documenting the wiring of the computer network system. Includes blueprints or drawings of building computer system wiring, cables, computer equipment connections, and related documentation. (Minimum retention: Current plus previous version)

(5) Filing System Records Records document the establishment, maintenance, alteration, or abolition of filing systems. Records may include but are not limited to include master file lists, organizational charts, program descriptions, and correspondence. (Minimum retention: 10 years after superseded or abolished)

(6) Forms Development Records Records document the development of new or revised forms. Records may include but are not limited to sample forms, drafts, revisions, form logs/listings, proposals, authorizations and illustrations. (Minimum retention: Until superseded or obsolete)

(7) Information Service Subscription Records Records document subscriptions to information services. Records may include but are not limited to subscriptions, invoices, and correspondence. (Minimum retention: 2 years)

(8) Information System Planning and Development Records Records document the planning and development of

information systems. Although these records typically document computerized information systems, they may also document manual filing systems and microfilm systems. The records are used to insure that planned systems will help the institution fulfill its missions, are cost-effective, conform to adopted information standards, and integrate with existing institution information systems. Records may vary according to the level of documentation required for each system, but may include information technology plans, feasibility studies, cost-benefit analyses, institution studies and surveys, information management project records, system specifications and revisions, software evaluations, component proposals, technical literature, vendor literature and proposals, and correspondence. (Minimum retention: (a) Implemented systems: Life of the system; (b) Unimplemented systems: 3 years)

(9) Microfilm Quality Control Records Records document that microfilm produced by or for counties and special districts conforms to the specifications required by Oregon Administrative Rules 166-025-0005 to 166-025-0030. Records may include but are not limited to microfilmed records lists, microfilm reel indexes, service bureau transmittals, film inspection reports, methylene blue certifications, camera/processor/duplicator inspection reports, equipment and operator logs, and correspondence. (Minimum retention: Same as related microfilm)

(10) Public Records Disclosure Request Records Records document requests for disclosure of public records and provide a record of responses. Records may include but are not limited to requests for disclosure, types of records requested, request logs, notation of transfer to another district, approvals, denials, copies of petitions to the District Attorney for review of denials of disclosure, District Attorney Orders to grant or deny disclosure, correspondence, and related documentation. (Minimum retention: (a) Approved requests: 2 years; (b) Denied requests: 2 years after last action)

(11) Records Management Records

Records document the authorized retention, scheduling, inventory, and disposition of public records. Records may include but are not limited to records retention schedules, inventory worksheets, schedule authorizations, procedure guidelines, transmittals, destruction authorizations, reports, and correspondence. (Minimum retention: (a) Destruction records: Permanent; (b) Record retention schedules: 5 years after superseded; (c) Other records: 5 years)

(12) Software Management Records Records document the use of software in information systems to insure that institution software packages are compatible, that license and copyright provisions are complied with, and that upgrades are obtained in a timely manner. Records may include but are not limited to software purchase records, software inventories, software licenses, site licenses, and correspondence. (Minimum retention: 2 years after software disposed of or upgraded)

(13) Telecommunications System Management Records Records document the creation, modification, or disposition of telecommunications systems. Records may include but are not limited to equipment records, Federal Communications Commission records, repair order forms, system planning records, telecommunications maintenance contracts, telecommunications service orders, and correspondence. (Minimum retention: (a) Repair and service orders: 4 years; (b) Other records: 1 year after system superseded)

(14) User Support Records Records documenting troubleshooting and problem-solving assistance provided by information systems personnel to users of the systems (computer, telecommunications, etc.) Records may include assistance requests, resolution records, and related documentation. Information may include name of requester, date, time, location, and description of problem and resolution. (Minimum retention: 1 year)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0035

Payroll Records

This General Schedule is applicable to the payroll records of counties and special districts. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

(1) Deduction Authorization Records Records documenting employee application and authorization for voluntary payroll deductions, direct bank deposits, and related actions. Payroll deductions are directly deposited or remitted to the authorized financial institution, insurance company, or other agency or vendor. Records may include insurance

applications, enrollment cards, deduction authorizations, approval notices, deduction terminations, and related records. (Minimum retention: 2 years after superseded, terminated, or employee separates)

(2) Deduction Registers Registers or records serving the same function of documenting voluntary and/or required deductions from the gross pay of agency employees. Types of deductions include federal income and social security taxes, state tax, workers' compensation, union dues, insurance, deferred compensation, credit union, parking permit, prewritten checks, garnishments, levies, charitable contributions, and others. Information may include employee name and number, pay period, social security number, total deductions, net pay, check number, and related data. (Minimum retention: (a) Registers documenting state and federal taxes: 5 years; (b) Other registers: 2 years)

(3) Employee Time Records Records documenting hours worked, leave hours accrued, and leave hours taken by agency employees. Information usually includes employee name and social security number, hours worked, type and number of leave hours taken, total hours, dates, and related data. (Minimum retention: 4 years)

(4) Federal and State Tax Records Records, in addition to those itemized in this section, used to report the collection, distribution, deposit, and transmittal of federal and state income taxes as well as social security tax. Examples include the federal miscellaneous income statement (1099), request for taxpayer identification number and certificate (W-9), employer's quarterly federal tax return (941, 941E), tax deposit coupon (8109), and similar federal and state completed forms. (Minimum retention: 5 years)

(5) Garnishment Records Records documenting requests and court orders to withhold wages from employee earnings for garnishments, tax levies, support payments, and other reasons. Usually includes original writs of garnishment, orders to withhold for the Oregon Department of Human Resources, federal or state tax levies, recapitulations of amounts withheld, and related records. Information usually includes employee name and number, name of agency ordering garnishment, amount, name of party to whom payment is submitted, dates, and related data. (Minimum retention: 2 years after resolution)

(6) Leave Applications Applications or requests submitted by employees for sick, vacation, compensatory, personal business, family and medical leave, long term leave, and other leave time. Information usually includes employee name, department, date, leave dates requested, type of leave requested, and related data. SEE ALSO Employee Time Records in this section. (Minimum retention: 3 years)

(7) Leave Balance Reports Reports documenting individual employee accrual and use of sick, vacation, compensatory, personal business, family and medical leave, and other leave time. Information usually includes employee name and number, social security number, leave beginning balance, leave time accrued, leave time used, ending balance, and related data. SEE ALSO Employee Benefits Records in the Personnel section. (Minimum retention: (a) Year-end leave balance reports: 75 years after date of hire; (b) Other reports: 2 years)

(8) Payroll Administrative Reports Reports, statistical studies, and other records designed and used for budget preparation, projections, workload and personnel management, research, and general reference. Often consists of recapitulation reports organizing wages, deductions, and other data into categories such as quarter-to-date, year-to-date, fiscal year-to-date, department, division, section, employee/employer contributions, and others. (Minimum retention: 2 years)

(9) Payroll Registers Registers or records serving the same function of documenting the earnings, deductions, and withholdings of agency employees. Information usually includes employee name and number, social security number, hours worked, rate, overtime, vacation value, leave taken or accrued, various allowances, gross pay, federal and state withholding, voluntary deductions, net pay, and related data. (Minimum retention: (a) Year-end payroll registers: 75 years; (b) Monthly payroll registers: 5 years; (c) Other payroll registers: 2 years)

(10) Unemployment Compensation Claim Records Records documenting claims submitted by former agency employees for unemployment compensation. Usually includes claims, notices, reports, and related records. May also include records generated by the appeal of claim determinations. (Minimum retention: 2 years)

(11) Unemployment Reports Records documenting employee earnings on a quarterly basis. Used to document costs and charges in the event of an unemployment compensation claim. Information includes employee name, social security number, quarterly earnings, days worked, totals, and other data. (Minimum retention: 2 years)

(12) Wage and Tax Statements Annual statements documenting individual employee earnings and withholdings for state and federal income taxes and social security tax. Also known as federal tax form W-2. Information includes agency name and tax identification number, employee name and social security number, wages paid, amounts withheld, and related data. (Minimum retention: 5 years)

(13) Withholding Allowance Certificates Certificates documenting the exemption status of individual agency employees. Also described as W-4 forms. Information includes employee name and address, social security number, designation of exemption status, and signature. (Minimum retention: 5 years after superseded or employee separates)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0040

Personnel Records

This General Schedule is applicable to the personnel records of counties and special districts. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

- (1) Affirmative Action Records Records documenting agency compliance with the statutes and regulatory requirements of the U.S. Equal Employment Opportunity Commission. May include plans, updates, policy statements, reports, and supporting information. (Minimum retention: (a) Plans, updates, and policy statements: Permanent; (b) Other records: 3 years)
- (2) Bond Records (Employee) Records documenting the posting of fidelity, performance, or position bonds to guarantee the honest and faithful performance of elected officials, individual employees, or groups of employees. Details of bonds vary, however information usually includes name and position(s) of individual or group, amount of coverage, effective and expired dates, and related data. (Minimum retention: 6 years after expiration)
- (3) Collective Bargaining Records Records documenting negotiations between the agency and employee representatives. May include contracts, reports, negotiation notes, arbitration findings, cost analyses, minutes, tape recordings, and related significant records. (Minimum retention: (a) Contracts and minutes: 75 years after contract expires; (b) Other records: 6 years after contract expired)
- (4) Comparable Worth Study Records Records documenting the analysis, study, and resolution of pay equity, alleged job discrimination, and related issues involving the agency and its employees. May include job content questionnaire summaries, position allocation reports, personnel reclassification studies, job category listings, study outlines, graphs, tables, and significant related records. (Minimum retention: (a) Final study or report: Permanent; (b) Other records: 5 years)
- (5) Employee Benefits Records Records document an individual agency employee's benefit information such as selection of insurance plans, retirement, pension, and disability plans, deferred compensation plans, and other benefit program information. Records may include but are not limited to plan selection and application forms, enrollment records, contribution and deduction summaries, personal data records, authorizations, beneficiary information, year-end leave balance reports, and related documentation. Records may be filed with the Employee Personnel Record. SEE ALSO Payroll Section. (Minimum retention: (a) Year-end leave balance reports and official copy of retirement enrollment records: 75 years after date of hire; (b) Other records: 2 years after employee separation or eligibility expired)
- (6) Employee Medical Records Records document an individual employee's work related medical history. These records are not personnel records and must be kept physically separate from employee personnel records--in a separate location, as required by the Americans with Disabilities Act. Records may include but are not limited to medical examination records (pre-employment, pre-assignment, periodic, or episodic), X-rays, records of significant health or disability limitations related to job assignments, documentation of work related injuries or illnesses, hearing test records, hazard exposure records, drug testing records, first-aid incident records, physician statements, release consent forms, and related correspondence. SEE ALSO Hazard Exposure Records in this section. (Minimum retention: (a) Hazard exposure records: 30 years after separation (29 CFR 1910.1020); (b) Other records: 6 years after separation)
- (7) Employee Recognition Records Recognition of employees for special service to the agency. May include service awards, recognition certificates, commendations, award nominations, lists of past recipients, and presentation or ceremony records and photographs. Some records in this series may have historic value. For appraisal assistance contact the Oregon State Archives. SEE ALSO Employee Suggestion Award Records in this section. (Minimum retention: 6 years)

(8) Employee Suggestion Award Records Records documenting an employee suggestion program where employees may submit suggestions that improve effectiveness, efficiency, and economy in agency operations. Employees may receive awards for adopted suggestions. Records may include suggestion forms and evaluations, award information, and related documentation. SEE ALSO Employee Recognition Records in this section. (Minimum retention: (a) Adopted suggestions: 2 years; (b) Suggestions not adopted: 1 year)

(9) Employment Eligibility Verification Forms (I-9) Records document the filing of U.S. Immigration and Naturalization Service Form I-9 form which verifies that an applicant or employee is eligible to work in the United States. Information includes employee information and verification data such as citizenship or alien status and signature, and employer review and verification data such as documents which establish identity and eligibility, and employer's signature certifying that documents have been checked. (Minimum retention: 3 years or 1 year after employee separation, whichever is longer)

(10) Equal Employment Opportunity Commission Compliance Records Series documents agency compliance with U.S. Equal Employment Opportunity Commission regulations. Records may include EE0-4 reports, anti-discrimination committee meeting records and reports, workplace analyses, discrimination complaint policies and procedures, complaints, reports, exhibits, withdrawal notices, copies of decisions, hearings and meetings records, related correspondence, and other records described in 29 CFR 1613.222. (Minimum retention: (a) Plans, updates, and policy statements: 50 years; (b) Complaint records and documentation: 3 years after final decision issued; (c) Other records: 3 years)

(11) Equal Employment Opportunity Complaint Records Case files maintained in relation to discrimination complaints made against the agency. Records may include complaints, reports, exhibits, withdrawal notices, copies of decisions, hearings and meetings records, and related documentation and correspondence. (Minimum retention: 3 years after final decision issued)

(12) Equal Employment Opportunity Policy Development Records Records documenting the adoption and administration of agency programs to set personnel policies and procedures within the scope of the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972. May contain anti-discrimination committee meeting records and reports, workplace analyses, discrimination complaint policies and procedures, and related records. (Minimum retention: (a) Plans, updates, and policy statements: Permanent; (b) Other records: 3 years)

(13) Hazard Exposure Records Records document an agency employee's exposure to hazardous conditions such as chemicals, toxic substances, blood-borne pathogens, biological agents, bacteria, virus, fungus, radiation, noise, dust, heat, cold, vibration, repetitive motion, or other dangerous work related conditions. These records are not personnel records and should be maintained in an Employee Medical File. Records may include but are not limited to hearing test records, radiation measurement records, blood test or other laboratory results, incident reports, first-aid records, X-rays, work station air sampling reports, and correspondence. SEE ALSO Employee Medical Records in this section. (Minimum retention: 30 years after separation (29 CFR 1910.1020))

(14) Hearing Test Records Records documenting employee participation in the State Hearing Conservation Program as required by the Oregon Workers' Compensation Division. The program applies to employees exposed to working conditions that may impair hearing. Contains measurement records that include audiogram number, employee's name and department, technician's name, date tested, and remarks. Also contains hearing test results which include employee's name, department, job classification, length of service, phone number, date of birth, previous hearing condition, exposure to sound levels, results of noise exposure and audiometer tests, comments, and related information. (Minimum retention: 75 years after original date of hire)

(15) Individual Employee Pension and Retirement Records Records documenting the status of individual employees participating in pension, retirement, and disability plans. Records often include enrollment cards, contribution and deduction summaries, personal data records, authorizations, beneficiary information, and other related records. (Minimum retention: 75 years after original date of hire)

(16) Individual Employee Personnel Records Records documenting the work history of non-volunteer individual employees with the agency. Usually maintained as case files. May include employment applications, resumes, appointments, personnel action records, grievance and complaint records, disciplinary records, training records, performance appraisals, and other records used to document the employee's work history. (Minimum retention: (a) Temporary and student workers--All Records: 3 years after separation; (b) Regular employees--Disciplinary Action, Grievance, and Complaint Records: 3 years; (c) Regular Employees--All Other Records: 6 years after separation)

(17) Layoff Records Series documents procedures and computations used in laying off agency employees. May include service credit computations, service credit lists, layoff ranking lists, layoff notice letters, and related correspondence. Related records may be filed in Individual Employee Personnel Files. (Minimum retention: 3 years)

- (18) Photo Identification Records Photographs and other records used to identify agency employees, private security personnel, contract workers, and others. May include photographs taken for agency identification cards, driver's license photographs, and information such as name, date of birth, physical description, identification number, driver's license number, and other data. (Minimum retention: Until superseded or obsolete)
- (19) Position Description and Classification Records Records describing and classifying agency jobs and positions. Usually includes details of duties and responsibilities of each position, time percentage breakdowns of tasks, skills and abilities needed for each position, and related records documenting the development, modification, or redefinition of each job or position. Records often include reports, job analyses, interview data, selection criteria, authorizations, agreements, and significant related records. (Minimum retention: 3 years after superseded or obsolete)
- (20) Position Reclassification Records Series documents studies and evaluations of positions to determine if reclassification is appropriate. Records may include old and new position descriptions, organizational charts, classification specifications, desk audits, classification review reports, and related correspondence. (Minimum retention: 3 years)
- (21) Recruitment and Selection Records Records related to the recruitment and selection process for filling open positions within the agency. Often includes job announcements, applicant lists, position advertisement records, civil service and other examination records, classification specifications, affirmative action statistical sheets, interview questions, video tapes, applicant background investigation information, position authorization forms, certifications of eligibles, employment eligibility verification forms, and related records. (Minimum retention: (a) Recruitment summary records: 10 years; (b) Unsolicited employment applications: 3 months; (c) All other records: 3 years after position filled or recruitment canceled)
- (22) Training Program Records Records related to the design and implementation of training programs provided to employees by the agency. May include class descriptions, instructor certifications, planning documentation, instructional materials, course outlines, class enrollment and attendance records, and related significant records. (Minimum retention: (a) Significant program records: 5 years; (b) Class enrollment and attendance records: 2 years; (c) Other records: 1 year)
- (23) Volunteer Program Records Records documenting the activities and administration of volunteer programs and volunteers in the agency. May include volunteer hour statistics, volunteer program publicity records, insurance requirement information, inactive volunteer files, and related records. May also include individual volunteer records such as agreements, applications, skills test results, and training documentation. (Minimum retention: (a) Volunteer program records: 5 years; (b) Individual volunteer worker records: 2 years after separation)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 & ORS 192.170 & ORS 357.805 & ORS 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

166-103-0045

Risk Management Records

This General Schedule is applicable to the records of counties and special districts relating to emergency preparedness, safety, and risk management. They apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above-specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records.

- (1) Contractor Liability Insurance Verification Records Letters or certificates of coverage provided by insurance companies declaring that specific contractors are covered by appropriate liability insurance. Information usually includes insurance company name and address, issue date, expiration date, amount of coverage, type of coverage, special provisions, signature of insurance company representative, and related data. (Minimum retention: (a) If related to county or special district improvement project: 10 years after substantial completion, as defined by ORS 12.135(3); (b) Other records: 6 years after expiration)
- (2) Contractor Performance Bond Records Records documenting the posting of performance guarantees or surety bonds by contractors performing work for the agency. May include letters, certificates, copies of bonds, and similar records. Information usually includes name of individual or company covered, amount of coverage, effective and expires dates, name of bonding agent, authorized signatures, and related data. (Minimum retention: (a) If related to county or special

district improvement project: 10 years after substantial completion, as defined by ORS 12.135(3); (b) Other bond records: 6 years after expiration)

(3) Hazard Communications Program Records Records documenting participation in the Hazard Communications Program as required by the Oregon Occupational Safety and Health Administration (OR-OSHA). These records may be useful as documentation for exposure and other claims because they include chemical content, safe handling instructions, and other facts about a product at a given time in the past. Usually includes plans, reports, and material safety data sheets (MSDS). Information included in the material safety data sheets includes product name, manufacturer's address and phone number, hazardous ingredients contained, ingredient description, carcinogenicity, quantity of ingredients, fire and explosion data, health hazard data, radioactivity data, spill and leak pressures, safe handling and use information, special use precautions and related data. (Minimum retention: 75 years after superseded)

(4) Hazardous Substance Employer Survey Records Series documents the locations, quantities, and individuals responsible for specific hazardous chemicals housed by an agency. This record is sent to the State Fire Marshal. Records include hazardous chemical compositions, lot numbers, and emergency disposition instructions. (Minimum retention: Until superseded, destroy)

(5) Incident Reports Series documents incidents which result in an investigation of fraud. Information includes correspondence documenting incident, investigation report, and resolution/final determination. (Minimum retention: 5 years)

(6) Injury Reports, Public Use Records documenting injuries sustained by non-employees on county or special district property such as parks, courthouses, libraries, and administrative buildings. Information usually includes date, time, location, and description of injury, name, address, phone number, sex, and age of injured person, witnesses, date reported, and related data. (Minimum retention: (a) If claim filed: See Liability Claims Records; (b) If no claim filed: 3 years)

(7) Insurance Fund Claims Series documents requests for payment of insurance claims from insurers. Records may include Auto/Liability/Property Claim Reports, estimates of repairs, accident reports, police reports, and correspondence. (Minimum retention: 5 years)

(8) Insurance Policy Records Records documenting the terms and conditions of insurance policies between the agency and insurers. Types of insurance include liability, property, group employee health and life, motor vehicle, workers' compensation, flood, and others. Records usually include policies, endorsements, rate change notices, agent of record, and related documents. (Minimum retention: (a) Group employee health and life, property, and liability insurance: 75 years after expiration if no claims pending; (b) Other insurance: 6 years after expiration if no claims pending)

(9) Liability Claims Records Records documenting various types of liability claims filed against the agency. These include personal injury, property damage, motor vehicle accident, false arrest, and others. Records often include reports, photographs, summaries, reviews, notices, audio and videotapes, transcriptions of recorded statements, memoranda, correspondence, and related documents. (Minimum retention: (a) If action taken: 10 years after case closed, dismissed, or date of last action; (b) If no action taken: 3 years)

(10) Liability Waivers Records documenting the release of the agency from liability related to various activities that include citizen involvement. Examples include but are not limited to riding in police or emergency medical services vehicles, participating in agency sponsored runs or other activities such as recreational classes including canoeing, kayaking, tennis, basketball, and others. Information usually includes release terms, date, signatures, and related information. (Minimum retention: 3 years)

(11) Master Material Safety Data Records Series documents all hazardous chemicals used and held by an agency. Records include hazardous materials safety sheets, safety instructions, and emergency instructions. (Minimum retention: Until superseded)

(12) Occupational Injury and Illness Records Series is used to provide the Oregon Occupational Safety and Health Administration (OR-OSHA) with workers' compensation claim information about agency employees. Records may include logs and summaries, serious injury reports, injury cost reports, and annual occupational injuries and illnesses surveys. (Minimum retention: 6 years)

(13) Personnel Accident Incident Reports Series used to report employee accidents to agency supervisors. Records may include SAIF accident reports, accident reports, occupational injury report and investigation, and employee identification and physical assessment form. (Minimum retention: 10 years after case closed)

(14) Property Damage Records Reports, photographs, and other records documenting damage to agency property such as

signs, trees, picnic tables, buildings, fountains, and fences. Information often includes type and location of property damaged, description of damage, date and time of damage (if known), name and address of individual who caused damage (if known), value of damage, billing costs, and related data. (Minimum retention: (a) If litigated: 10 years after case closed, dismissed, or date of last action; (b) If not litigated: 3 years after date of last action)

(15) Risk Factor Evaluation Records The series is used to assess various risk factors for an agency and determine appropriate insurance needs. Records may include worksheets, yearly risk reports, restoration fund inventory reports, policy manuals, property transfer reports, self insurance manuals, real property reports, money and negotiable securities reports, a general risk survey and correspondence. (Minimum retention: 4 years)

(16) Safety Inspection and Compliance Records Series provides a record of safety inspections and documents agency compliance with state and local safety regulations. Records may include reports on building, fire alarm system, elevator, and boiler inspections performed by state and local agencies as well as citations received by the agency. Also includes follow-up actions and correspondence. (Minimum retention: 10 years)

(17) Safety Plans Series documents an agency's plan to promote a safe work environment for its employees. (Minimum retention: Until superseded)

(18) State Accident Insurance Fund (SAIF) Claim Records Series documents job-related injury and illness compensation claims made by agency employees to the State Accident Insurance Fund and the resulting claim disposition. Records may include case histories, employer's payroll reports, SAIF premium reports, hearing transcripts, notices of claim acceptance, injury reports, supervisor's accident investigation reports, SAIF injury report summaries, opinions and orders, appeal letters, claim adjustment documentation, physician's reports, cost statements, and associated correspondence. (Minimum retention: 6 years after claim closure)

(19) State Accident Insurance Fund (SAIF) Injury Reports Series documents the information submitted to the State Accident Insurance Fund about personal injuries incurred by agency employees. (Minimum retention: 1 year)

(20) Vehicle Accident Records Records documenting accidents involving agency vehicles. May include dispatch reports with information such as name and address of parties involved, date and time, complaint, description of damage, and other data. Records may also contain motor vehicle accident reports which include the driver's name, address, phone number, date of birth, and driver's license number, as well as passenger and witness names, description of events, make and model of vehicle(s), vehicle identification number, and related data. Photographs and correspondence also may be part of these records. (Minimum retention: (a) If litigated: SEE ALSO Civil Case Files in Counsel Section; (b) If not litigated: 3 years)

(21) Workers' Compensation Claim Records Records documenting the processing of individual employee claims of job related injuries or illnesses, but not those describing actual medical conditions. Includes records satisfying the procedural requirements of the State Workers' Compensation Division and the State Workers' Compensation Board, as well as those of (depending on agency arrangements) the State Accident Insurance Fund (SAIF), private insurance providers, or self-insurance. Records may include claim disposition notices, claim reporting and status forms; injury reports; determination orders; insurance premium data; hearing requests; safety citations; inspection reports; medical status updates and reports; investigation reports; reimbursement and payment records; and related correspondence and documentation. SEE ALSO Employee Medical Records in the Personnel section for records describing the job related injury or illness and the related subsequent medical condition of the employee. These often include workers' compensation accident reports, medical reports, vocational rehabilitation evaluations, disability determinations and related records. (Minimum retention: (a) Records describing injuries and illnesses: SEE ALSO Employee Medical Records in the Personnel section; (b) Other records: 6 years after claim closed or final action)

(22) Workers' Compensation Program Records Series used to provide a record of an agency's occupational injury/accident claims, safety compliance inspections, insurance coverage, and related reimbursement issues. Records may include claim disposition notices, claim reporting/status forms, injury reports, WCD Determination Orders, insurance premium data, hearing requests, safety citations, inspection reports, medical status updates, investigation records, and correspondence. (Minimum retention: 6 years)

(23) Workplace Safety Committee Records Series documents the actions of the committee that oversees or advises the agency in relation to safety issues. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, tape recordings, correspondence, and related documents. Subjects include hazards to employees and the general public, construction design, and repair safety concerns, suggestions, complaints, state and federal rules and regulations, and others. (Minimum retention: (a) Minutes: retain 10 years; (b) Other records: retain 5 years)

Stat. Auth.: ORS 192 & ORS 357

Stats. Implemented: ORS 192.005 &endash; ORS 192.170 & ORS 357.805 &endash; ORS. 357.895

Hist.: OSA 2-1999, f. 6-10-99, cert. ef. 6-10-99

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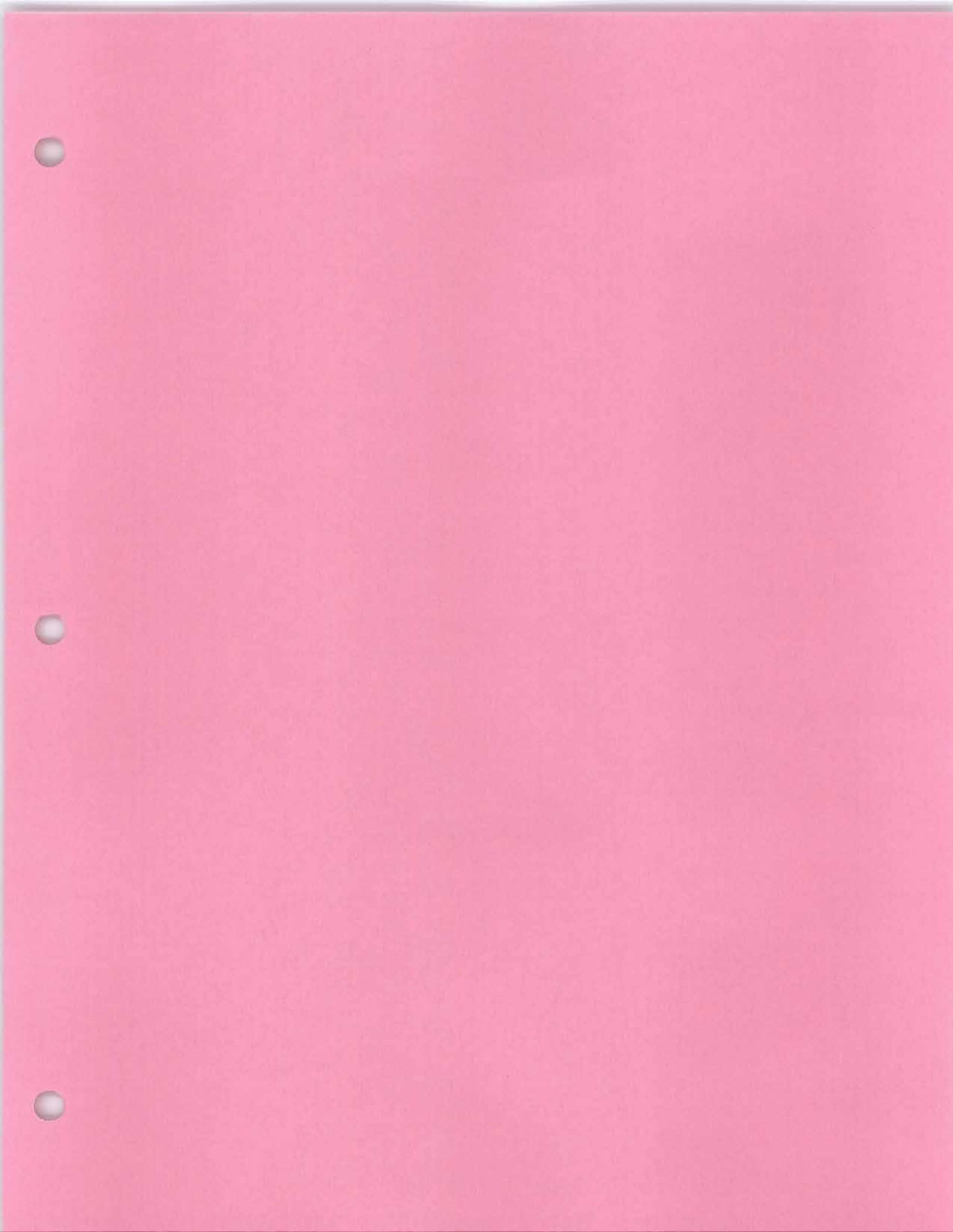
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294.1005, shall credit to the general fund of the district all interest received from any investment made by funds in the hands of the county fiscal officer. If the entire investment is made from a specific fund, however, the county fiscal officer shall credit the interest to the fund from which the investment was made.

(3) Interest earned by investment of any moneys received by the county treasurer from any source, which moneys have been designated for a particular municipal corporation as defined in ORS 294.311, shall be credited to the account of the particular municipal corporation and not to any county fund. [1963 c.336 §1; 1971 c.513 §54; 1979 c.762 §8; 1997 c.308 §33]

294.085 Examining books and papers of county officers. (1) The county court or board of county commissioners, while sitting for county business at the regular terms in January and July of each year, shall carefully examine all books and papers relating to the financial affairs of the county offices of county clerk, clerk of the county court, treasurer and sheriff of the county.

(2) The county clerk and clerk of the county court shall exhibit the numbered orders and vouchers referred to in ORS 294.090, together with the stubs of the warrants, and all other books and papers relating to the financial affairs of the county, for the inspection of the county court or board of county commissioners at the time provided for in subsection (1) of this section. [Amended by 1985 c.565 §49]

294.090 County orders and vouchers to be numbered to correspond to warrants drawn. The county clerk and clerk of the county court shall number all orders and vouchers with numbers to correspond with warrants drawn.

294.095 Action or proceeding with respect to budget or levy; fiscal year with respect to which taken. Wherever it is provided by law that any action or proceeding of any county, city, school district or other municipal corporation or body politic shall be taken with respect to a budget or tax levy for the calendar year, or for a fiscal year closing on any day other than June 30, each such action or proceeding shall be taken with respect to the fiscal year commencing on July 1 and closing on June 30.

294.100 Public official expending money in excess of amount or for different purpose than provided by law unlawful; civil liability. (1) It is unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by law.

(2) Any public official who expends any public money in excess of the amounts, or for any other or different purpose or purposes than authorized by law, shall be civilly liable for the return of the money by suit of the district attorney of the district where the offense is committed, or at the suit of any taxpayer of such district.

(3) On the demand in writing of 10 taxpayers of any municipal corporation with a population exceeding 100,000 inhabitants, filed with the tax supervising and conservation commission in the county in which the municipal corporation is situated, which demand sets forth that a public official or public officials have unlawfully expended money in excess of the amounts or for any other or different purpose or purposes than provided by law, the tax supervising and conservation commission shall make an investigation of the facts as to such expenditures. If the tax supervising and conservation commission finds that moneys have been unlawfully expended, the commission shall proceed at law in the courts against the public officials who have unlawfully expended the moneys for the return of the moneys unlawfully expended to the treasury of the municipal corporation. A right of action hereby is granted to the tax supervising and conservation commission for such purpose.

294.105 [Amended by 1963 c.9 §15; 1973 c.315 §1; repealed by 1983 c.537 §7]

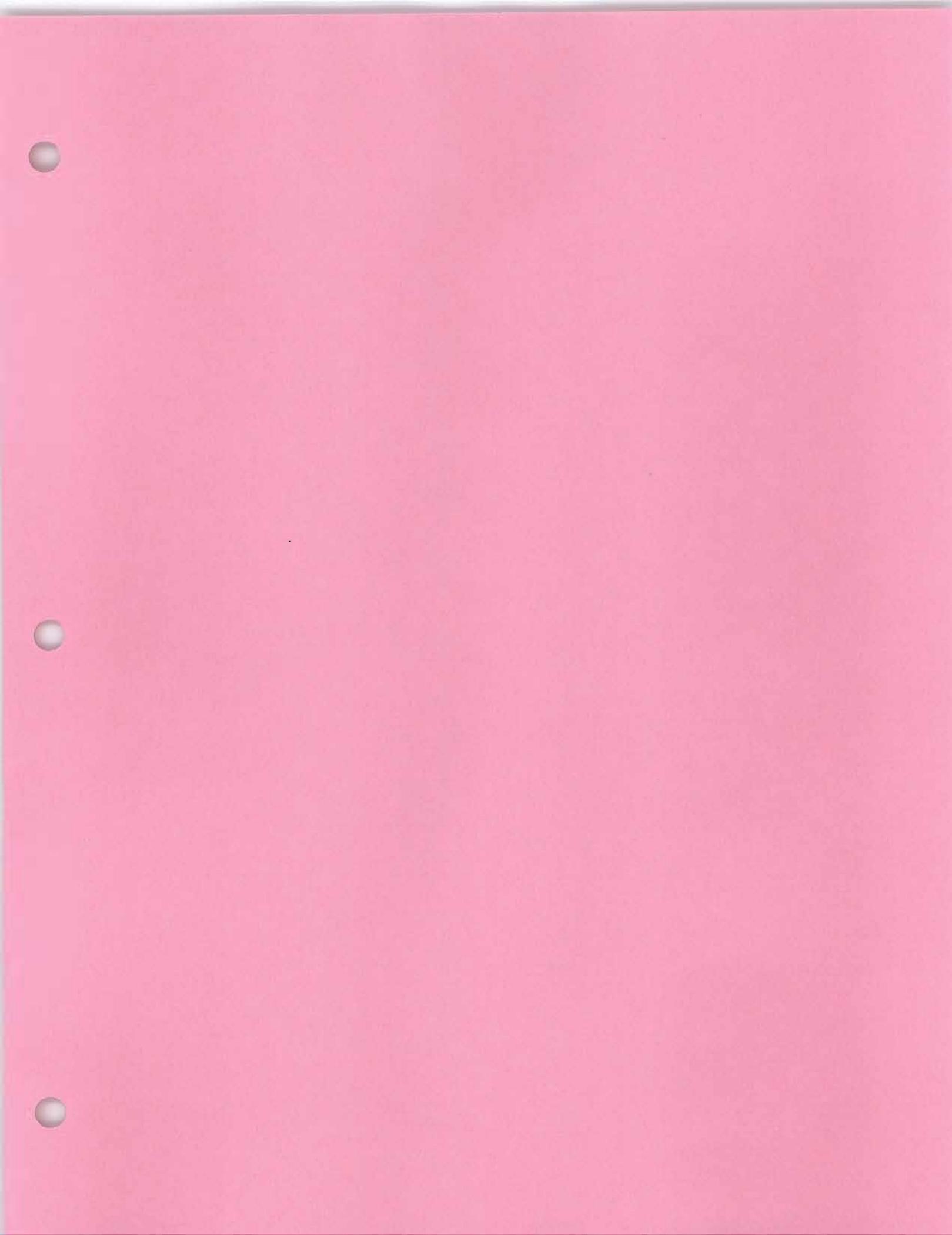
294.110 [Repealed by 1953 c.306 §18]

294.115 [1953 c.655 §1; repealed by 1963 c.576 §44]

294.120 Use of facsimile signatures. (1) When authorized to use facsimile signatures by the governing body of any county, city, district organized for public purpose or any other public corporation or political subdivision of this state, any person authorized to sign any check, warrant or other instrument on behalf of the county, city, district, public corporation or political subdivision may, in the discretion of the person, sign the check, warrant or other instrument by facsimile signature affixed by rubber stamp or by any mechanical equipment or device.

(2) Where the use of facsimile signatures is authorized under this section, the holder or drawee of any check, warrant or other instrument bearing or purporting to bear a facsimile signature shall be under no duty to determine the authority of the person who affixed the facsimile signature or use facsimile signatures. [1955 c.261 §1]

294.125 Investment of funds authorized by order of governing body; limitations. (1) Subject to ORS 294.040 and 294.135 to 294.155, the custodial officer of any county, municipality, school district or other political subdivision of this state may, after having obtained a written order from the



New Permanent Rates for 2000-01 Under Provisions of SB 123 (Excludes effects of SJR1)
Deschutes County Districts

District Number	District Name	Permanent Rates		
		Current	SB 123 Final	Change
90000000	DESCHUTES COUNTY	0.0012783	0.0012783	0.0000000
90001050	BEND METRO PARK & REC	0.0015186	0.0014610	-0.0000576
90001060	CENTRAL OREGON PARK & REC	0.0003831	0.0003717	-0.0000114
90001440	LA PINE PARK & REC	0.0000000	0.0000000	0.0000000
90002900	SPECIAL ROAD DIST 1	0.0020917	0.0019820	-0.0001097
90002910	SPECIAL ROAD DIST 6	0.0014318	0.0013502	-0.0000814
90002920	LAZY RIVER SPECIAL ROAD	0.0042147	0.0042147	0.0000000
90002930	MCARDLE SPECIAL ROAD	0.0000000	0.0000000	0.0000000
90002931	BEAVER SPECIAL ROAD	0.0012698	0.0012013	-0.0000685
90002932	FOREST VIEW SUB SPECIAL ROAD	0.0013552	0.0012785	-0.0000767
90003180	SPECIAL ROAD DISTRICT 4	0.0000000	0.0000000	0.0000000
90003320	RIVER FOREST ACRES SPECIAL ROAD	0.0016548	0.0016610	-0.0000062
90003390	HOWELL HILLTOP ACRES SPEC ROAD	0.0023578	0.0022525	-0.0001053
90003440	SPECIAL ROAD DISTRICT 8	0.0016833	0.0016239	-0.0000594
90003450	VANDEVERT ACRES SPECIAL ROAD	0.0016242	0.0016123	-0.0000119
90003460	RIVER BEND ESTATES SPECIAL ROAD	0.0031948	0.0031948	0.0000000
90003540	SQUAWK CREEK SPECIAL ROAD	0.0000000	0.0000000	0.0000000
90003570	PANORAMIC ACCESS SPECIAL ROAD	0.0012624	0.0011880	-0.0000744
90003610	OR WINTER WONDERLAND 1 ROAD	0.0000000	0.0000000	0.0000000
160003710	CROOKED RIVER RANCH J ROAD	0.0008159	0.0008140	-0.0000019
90003770	O.R.R.H UNITS PTJ ROAD	0.0000000	0.0000000	0.0000000
90003810	NEWBERRY ESTATE SPECIAL ROAD	0.0008295	0.0007831	-0.0000464
90003820	BEND CASCADE V EST TR 2 ROAD	0.0014425	0.0013668	-0.0000757
90003950	FALL RIVER EST SPECIAL ROAD	0.0010399	0.0009788	-0.0000611
90003994	PONDEROSA SPECIAL ROAD	0.0010469	0.0010469	0.0000000
90004120	OR WINTER WONDERLAND II SANITARY	0.0000000	0.0000000	0.0000000
90004820	SUNRISE VILLAGE SANITARY	0.0000000	0.0000000	0.0000000
90004890	STARWOOD SANITARY	0.0000000	0.0000000	0.0000000
90004700	LAPINE SPECIAL SEWER	0.0000000	0.0000000	0.0000000
90005340	TERREBONE WATER	0.0000000	0.0000000	0.0000000
90005346	PONDEROSA WATER	0.0000000	0.0000000	0.0000000
90006550	LADLAW WATER	0.0000000	0.0000000	0.0000000
90007480	CHAPPARAL WATER CONTROL	0.0000000	0.0000000	0.0000000
90007660	FOUR RIVER VECTOR CONTROL	0.0003078	0.0002895	-0.0000183
90008280	DESCHUTES CO EXTENSION SERVICE	0.0000235	0.0000224	-0.0000011
90008300	BLACK BUTTE SERVICE	0.0010883	0.0010489	-0.0000394
90009192	BEND LIBRARY	0.0000000	0.0000000	0.0000000
90009193	REDMOND LIBRARY	0.0000000	0.0000000	0.0000000
90009194	SISTERS LIBRARY	0.0000000	0.0000000	0.0000000
90009195	SUN RIVER LIBRARY	0.0000000	0.0000000	0.0000000
90009196	LAPINE LIBRARY	0.0000000	0.0000000	0.0000000
90025900	DESCHUTES 1 JT RFPD	0.0018622	0.0017542	-0.0001080
90026000	BEND 2 RFPD	0.0015328	0.0014366	-0.0000962
90026100	CLOVERDALE RFPD	0.0010643	0.0010107	-0.0000536
90026300	LAPINE RFPD	0.0016384	0.0015397	-0.0000987
90026400	BLACK BUTTE RANCH RFPD	0.0016214	0.0014877	-0.0001337
90029000	SISTERS CAMP SHERMAN JT RFPD	0.0027317	0.0027317	0.0000000
180029100	CROOKED RIVER RANCH JT RFPD	0.0018417	0.0018379	-0.0000038
90090600	CENTRAL OREGON HOSPITAL	0.0001323	0.0001323	0.0000000
90093100	DESCHUTES CO OPERATION 811	0.0001701	0.0001618	-0.0000083
90171000	BEND 1 SCHOOL	0.0050073	0.0047641	-0.0002432
90171300	BEND 1 (73 BOND)	0.0000000	0.0000000	0.0000000
90172000	REDMOND 2J SCHOOL	0.0052682	0.0050251	-0.0002431
90173000	SISTERS 8J SCHOOL	0.0043068	0.0040997	-0.0002071
90174000	BROTHERS 16J SCHOOL	0.0050262	0.0046712	-0.0003550
90608000	DESCHUTES ESD	0.0001008	0.0000964	-0.0000044
90602000	CENTRAL OREGON COMMUNITY COLLEGE	0.0006464	0.0006204	-0.0000260
91190000	BEND CITY	0.0026845	0.0026354	-0.0000491
92740000	REDMOND CITY	0.0061643	0.0061643	0.0000000
92980000	SISTERS CITY	0.0027144	0.0026417	-0.0000727

Source: Research Section, Oregon Department of Revenue

17-Jun-99

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SB 123 rates

Sample Budget

**XYZ DISTRICT
Annual Budget
July 1, XXXX to June 30, XXXX**

REVENUES

Current Year Taxes	\$180,000.00
Previous Year Taxes	\$ 2,000.00
Interest on Invested Funds	\$ 2,000.00
Fees & Charges	\$ 6,000.00

TOTAL REVENUES \$190,000.00

OPERATING EXPENDITURES

Admin/Insurance	\$ 3,650.00
Uncollected Taxes	\$ 1,500.00
Snow Removal	\$ 57,000.00
Grading	\$ 40,000.00
Equipment Repair	\$ 15,000.00

TOTAL OPERATING EXPENDITURES \$117,150.00

RESERVES ALLOCATIONS

Replacement Fund	
1955 Grader	\$ 25,000.00
Road Upgrade	\$ 47,850.00

TOTAL RESERVE ALLOCATIONS \$ 72,850.00

TOTAL OPERATING EXPENDITURES &
RESERVES ALLOCATIONS \$190,000.00

Special Road District Guidebook

Sample Balance Sheet

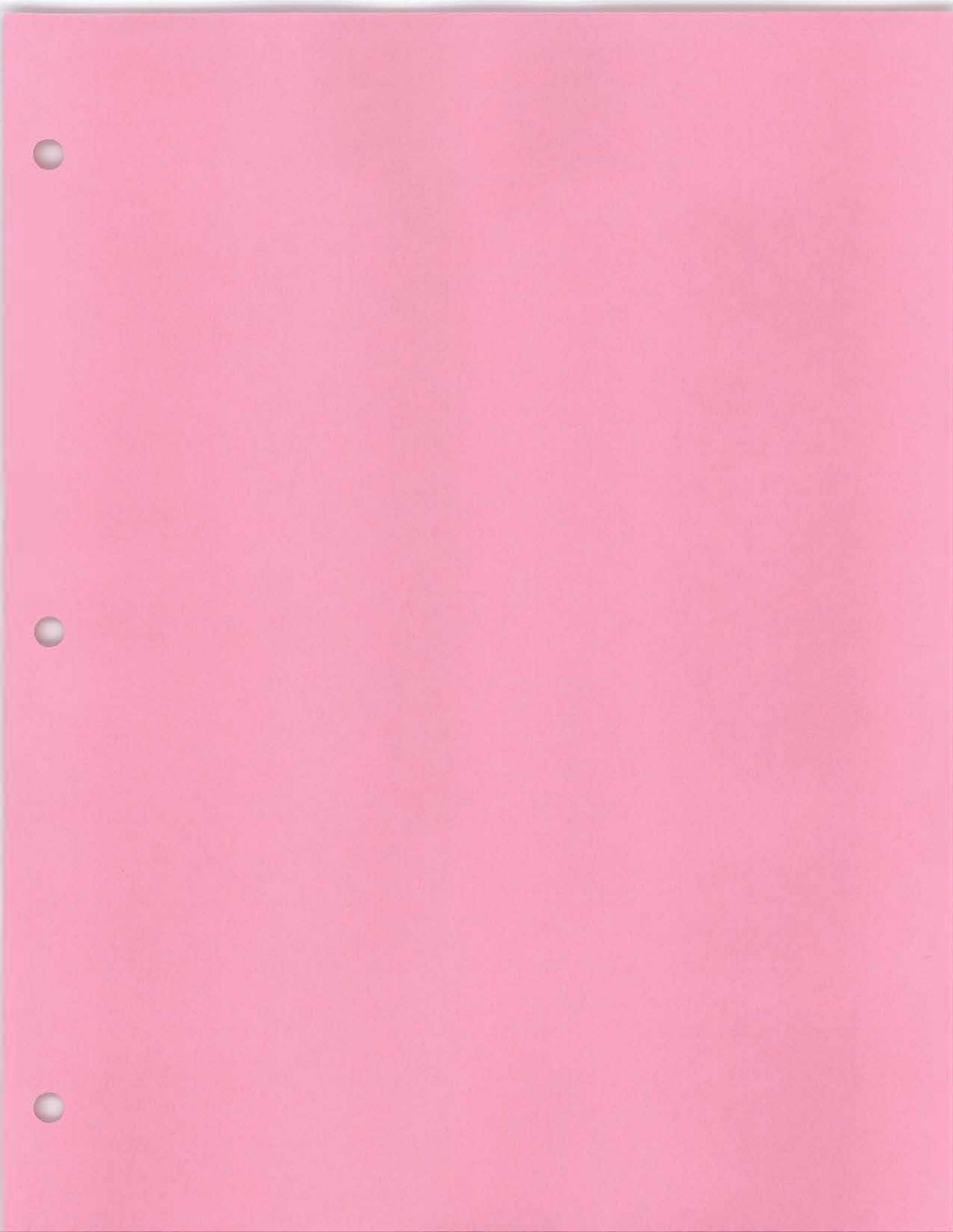
**XYZ DISTRICT
BALANCE SHEET
March 31, XXXX
(Accrual Method)**

ASSETS	OPERATING FUND	REPLACEMENT FUND	TOTAL ALL FUNDS
Cash: Operations - ABC Bank Acct #123456	\$16,625.00	\$0.00	\$16,625.00
Cash: Replacement Savings		50,041.67	50,041.67
Accounts Receivable	26,500.00	0.00	26,500.00
Interfund Balance	(10,000.00)	10,000.00	0.00
TOTAL ASSETS	\$33,125.00 =====	\$60,041.67 =====	\$93,166.67 =====
LIABILITIES			
Accounts Payable	\$30,605.83 _____	\$0.00 _____	\$30,605.83 _____
FUND BALANCES			
Operating Fund Balance	\$ 2,519.17	\$0.00	\$ 2,519.17
Replacement Fund Balance	0.00 _____	60,041.67 _____	60,041.67 _____
TOTAL FUND BALANCES	2,519.17 _____	60,041.67 _____	62,560.84 _____
TOTAL LIABILITIES AND FUND BALANCES	\$33,125.00 =====	\$60,041.67 =====	\$93,166.67 =====

Sample Income & Expense Statement

**XYZ DISTRICT
INCOME AND EXPENSE STATEMENT
March 31, XXXX
(Accrual Method)**

	OPERATING FUND	REPLACEMENT FUND	TOTAL ALL FUNDS
REVENUES			
Taxes	\$165,000.00	\$0.00	\$165,000.00
Interest on Invest	1,146.79	0.00	1,146.79
Fees & Charges	5,500.00	0.00	5,500.00
	-----	----	-----
TOTAL REVENUES	\$171,646.79	0.00	\$171,646.79
	-----	----	-----
OPERATING EXPENDITURES			
Admin/Insurance	7,961.25	0.00	7,961.25
Uncollected Taxes	4,537.50	0.00	4,537.50
Snow Removal	93,623.75	0.00	93,623.75
Grading	38,147.67	0.00	38,147.67
Equipment Repair	16,341.67	0.00	16,341.67
	-----	----	-----
TOTAL OP EXPEND	\$160,605.83	0.00	\$160,605.83
	-----	----	-----
Transfers In(Out) to Other Funds - Reserves Allocation			
Replacement Fund Contributions			
1955 Grader	(18,333.33)	18,333.33	0.00
Road Upgrade	(8,708.33)	8,708.33	0.00
	-----	-----	-----
TOTAL RESERVES ALLOCATIONS	(27,041.66)	(27,041.66)	0.00
	-----	-----	-----
Net Increase(Decrease) in Fund Balances	(\$16,000.70)	\$ 27,041.66	\$11,040.96



~~May designate a formula for the apportionment of expenses under subsection (2) of this section, and~~

~~(b) Designate the terms of election expenses that are payable to a district. [Formerly 259.260; 1983 c.514 §14; 1995 c.243 §3]~~

~~255.345 [Repealed by 1963 c.160 §1]~~

ELECTION DATES

255.325 Legislative intent to promote regularity of special district elections; rulemaking and enforcement by Secretary of State. The Secretary of State by rule shall require the districts that are not in compliance with ORS 255.335 to so comply. For this purpose, the rule may require adjusting or staggering terms of board members. [Formerly 259.235; 1981 c.173 §36]

255.335 Regular district election; terms of board members; organizational meeting. (1) The regular district election shall be held by each district for the purpose of electing members of the district board to succeed a member whose term expires the following June 30 and to elect members to fill any vacancy which then may exist. The election shall be held in each such district in each odd-numbered year on the second Tuesday in March.

(2) A district shall not conduct more than one election of board members in any year.

(3) The first regular district election in a district shall be held on the regular district election date next following the year in which the first members of the district board were elected or appointed.

(4) The term of a board member elected at the regular district election shall commence on the first day of July next following the election, and shall expire June 30 next following the regular district election at which a successor is elected.

(5) Each district board shall hold a regular organizational meeting following the regular district election and not later than the last day of July of that year. [Formerly 259.240; 1981 c.639 §8; 1983 c.350 §80; 1983 c.379 §4; 1989 c.923 §16; 1995 c.258 §1; 1995 c.712 §115a]

255.345 Special election dates. (1) Except as provided in subsection (2) of this section, a special election called by a district elections authority shall not be held on any date other than:

- (a) The second Tuesday in March;
- (b) The third Tuesday in May;
- (c) The third Tuesday in September; or
- (d) The first Tuesday after the first Monday in November.

(2) A special election may be held on a date other than that provided in subsection (1) of this section, if the district elections authority by resolution finds that an election sooner than the next available election date is required on a measure to finance repairs to property damaged by fire, vandalism or a natural disaster.

(3) As used in this section, "district elections authority" means the body or officer authorized or required to call an election for a public corporation formed under, and deriving its powers solely from, the statutes of this state, but does not include a city or county. [Formerly 259.260; 1981 c.639 §9; 1989 c.923 §17; 1991 c.71 §4; 1993 c.713 §53; 1995 c.607 §51; 1995 c.712 §116]

255.355 [Formerly 259.265; repealed by 1995 c.607 §91]

255.410 [Amended by 1953 c.359 §4; 1957 c.608 §201; 1961 c.532 §3; 1969 c.83 §3; 1975 c.766 §14; 1977 c.516 §4; 1979 c.190 §188; renumbered 251.185]

255.415 [1975 c.766 §25; 1977 c.460 §1; 1977 c.508 §12; 1979 c.190 §195; renumbered 251.255]

255.418 [1975 c.766 §18; 1979 c.190 §197; renumbered 251.275]

255.420 [Repealed by 1957 c.608 §231]

255.421 [1957 c.608 §203; 1959 c.457 §5; 1961 c.49 §4; 1965 c.350 §1; repealed by 1973 c.712 §5 (255.422 enacted in lieu of 255.421)]

255.422 [1973 c.712 §6 (enacted in lieu of 255.421); repealed by 1975 c.766 §29]

255.425 [1975 c.766 §17; repealed by 1977 c.460 §3]

255.430 [Amended by 1957 c.608 §204; 1975 c.766 §26; repealed by 1979 c.190 §431]

255.435 [1975 c.766 §2a; 1977 c.460 §2; 1979 c.190 §196; renumbered 251.265]

255.440 [Amended by 1953 c.359 §4; 1953 c.647 §2; 1957 c.608 §205; 1973 c.712 §7; 1979 c.190 §189; renumbered 251.195]

255.450 [Amended by 1957 c.608 §206; 1959 c.457 §6; repealed by 1973 c.712 §8 (255.452 enacted in lieu of 255.450)]

255.452 [1973 c.712 §9 (enacted in lieu of 255.450); repealed by 1975 c.766 §29]

255.455 [1977 c.516 §3; 1979 c.190 §198; 1979 c.749 §4; renumbered 251.285]

255.460 [Repealed by 1957 c.608 §231]

255.465 [1975 c.766 §27; 1979 c.190 §194; renumbered 251.245]

255.470 [1965 c.350 §2; 1975 c.766 §16; repealed by 1975 c.766 §29]

255.510 [1967 c.63 §2; 1979 c.190 §199; renumbered 251.295]

255.990 [Amended by 1973 c.155 §6; 1979 c.190 §200; renumbered 251.991]

CHAPTERS 256 AND 257

[Reserved for expansion]

GENERAL PROVISIONS

250.005 Definitions. As used in this chapter:

(1) "County clerk" means the county clerk or the county official in charge of elections.

(2) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Constitution.

(3) "Measure" includes any of the following submitted to the people for their approval or rejection at an election:

(a) A proposed law.

(b) An Act or part of an Act of the Legislative Assembly.

(c) A revision of or amendment to the Oregon Constitution.

(d) Local, special or municipal legislation.

(e) A proposition or question.

(4) "Prospective petition" means the information, except signatures and other identification of petition signers, required to be contained in a completed petition. [1979 c.190 §140; 1983 c.392 §3]

250.010 [Amended by 1957 c.608 §120; repealed by 1979 c.190 §431]

250.015 Form of petition; numbering of signature sheets. The Secretary of State by rule shall:

(1) Design the form of the prospective petition, and the initiative and the referendum petition, including the signature sheets, to be used in any initiative or referendum in this state.

(2) Designate the quality of paper to be used for signature sheets in order to assure the legibility of the signatures.

(3) Prescribe by rule a system for numbering the signature sheets to be used in any initiative or referendum in this state. [1979 c.190 §141; 1979 c.345 §1; 1981 c.909 §1; 1989 c.68 §5]

250.020 [Amended by 1957 c.608 §121; 1961 c.121 §4; 1979 c.190 §232; 1979 c.519 §17; renumbered 254.085]

250.025 Qualifications for signers of petition; removal of signatures. (1) Any elector may sign an initiative or referendum petition for any measure on which the elector is entitled to vote.

(2) After an initiative or referendum petition is submitted for signature verification, no elector who signed the petition may remove the signature of the elector from the petition. [Formerly 254.160; 1985 c.808 §24]

250.029 Withdrawal of initiative or referendum petition; form. The chief petitioners of an initiative or referendum petition may withdraw the petition at any time prior to the submission of the petition for

signature verification. The Secretary of State by rule shall design a form for use in filing a withdrawal of any initiative or referendum petition. The withdrawal form must be signed by all of the chief petitioners and filed with the filing officer. [1995 c.607 §25]

250.030 [Amended by 1957 c.608 §122; 1961 c.121 §5; 1979 c.190 §233; 1979 c.317 §8a; 1979 c.519 §18a; renumbered 254.095]

250.031 Rules for conduct of election under section 11, Article XI of Oregon Constitution. The Secretary of State shall adopt administrative rules for the conduct of elections under section 11, Article XI of the Oregon Constitution, that include but are not limited to provisions that:

(1) Set forth the requirements for an election to which section 11 (8), Article XI of the Oregon Constitution, is applicable that are consistent with the voter registration requirements of ORS chapter 247 and with the federal National Voter Registration Act of 1993 (P.L. 103-31);

(2) Provide directions to election officers for calculating whether the required number of registered voters eligible to vote voted in the election; and

(3) Interpret the words "cast a ballot" in section 11 (8), Article XI of the Oregon Constitution, as meaning that a ballot was lawfully cast, whether or not the vote of that ballot may lawfully be counted for reasons other than the eligibility of the voter to vote. [1997 c.541 §310]

250.035 Form of ballot titles for state and local measures. (1) The ballot title of any measure, other than a state measure, to be initiated or referred shall consist of:

(a) A caption of not more than 10 words which reasonably identifies the subject of the measure;

(b) A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

(c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.

(2) The ballot title of any state measure to be initiated or referred shall consist of:

(a) A caption of not more than 15 words that reasonably identifies the subject matter of the state measure. The caption of an initiative or referendum amendment to the constitution shall begin with the phrase, "Amends Constitution," which shall not be counted for purposes of the 15-word caption limit;

(b) A simple and understandable statement of not more than 25 words that de-

scribes the result if the state measure is approved. The statement required by this paragraph shall include either the phrase, "I vote" or "vote yes," or a substantially similar phrase, which may be placed at any point within the statement;

(c) A simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected. The statement required by this paragraph shall not describe existing statutory or constitutional provisions in a way that would lead an average elector to believe incorrectly that one of those provisions would be repealed by approval of the state measure, if approval would not have that result. Any thing or action described both in the statement required by paragraph (b) of this subsection and in the statement required by this paragraph shall be described using the same terms in both statements, to the extent practical. Any different terms must be terms that an average elector would understand to refer to the same thing or action. The statement shall include either the phrase, "I vote" or "vote no," or a substantially similar phrase, which may be placed at any point within the statement; and

(d) A concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.

(3) The statements required by subsection (2)(b) and (c) of this section shall be written so that, to the extent practical, the language of the two statements is parallel.

(4) The statement required by subsection (2)(b) of this section shall be written so that an affirmative response to the statement corresponds to an affirmative vote on the state measure.

(5) The statement required by subsection (2)(c) of this section shall be written so that an affirmative response to the statement corresponds to a negative vote on the state measure.

(6) To avoid confusion, a ballot title shall not resemble any title previously filed for a measure to be submitted at that election.

(7) In the statements required by subsection (2)(b), (c) and (d) of this section, reasonable discretion shall be allowed in the use of articles and conjunctions, but the statements shall not omit articles and conjunctions that are necessary to avoid confusion to or misunderstanding by an average elector. [1979 c.190 §143; 1979 c.675 §1; 1985 c.405 §1; 1987 c.556 §1; 1987 c.875 §1; 1995 c.534 §1; 1997 c.541 §312; 1999 c.793 §1]

Note: Section 3, chapter 793, Oregon Laws 1999, provides:

Sec. 3. (1) The amendments to ORS 250.035 by section 1 of this 1999 Act do not apply to any ballot title prepared for:

(a) Any initiative petition that, if filed with the Secretary of State with the required number of signatures of qualified electors, will be submitted to the people at the general election held on the first Tuesday after the first Monday in November 2000; or

(b) Any state measure to be referred that is to be voted upon at an election held prior to or on the first Tuesday after the first Monday in November 2000.

(2) The amendments to ORS 250.035 by section 1 of this 1999 Act apply to ballot titles prepared for:

(a) Any initiative petition that, if filed with the Secretary of State with the required number of signatures of qualified electors, will be submitted to the people at a general election occurring after the first Tuesday after the first Monday in November 2000, regardless of when the prospective petition for the initiative petition is filed; or

(b) Any state measure to be referred that is to be voted upon at an election held after the first Tuesday after the first Monday in November 2000.

(3) The amendments to ORS 250.045 by section 2 of this 1999 Act apply to petitions to initiate or refer a state measure for which a prospective petition is filed on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.793 §3]

250.036 Form of ballot title for measure subject to section 11 (8), Article XI of Oregon Constitution; exception. (1) Notwithstanding any other provision of law, all ballot titles subject to section 11 (8), Article XI of the Oregon Constitution, shall include the following statement as the first statement of the ballot title summary:

This measure may be passed only at an election with at least a 50 percent voter turnout.

(2) As used in this section, "at least a 50 percent voter turnout" means a voter turnout that meets the requirements of section 11 (8), Article XI of the Oregon Constitution.

(3) The statement required by this section shall not be counted in determining the word count requirements of ORS 250.035.

(4) Subsection (1) of this section shall not apply to the ballot title of a measure submitted to voters in a general election in an even-numbered year. [1997 c.541 §311]

250.037 Form of ballot title for measure requesting approval of certain bonds; elections by mail. (1) The ballot title of any measure requesting elector approval of bonds, the principal and interest on which will be payable from taxes imposed on property or property ownership that are not subject to the limitations of sections 11 and 11b, Article XI of the Oregon Constitution, shall contain, in addition to the matters required by ORS 250.035, the following statement immediately after the ballot title question and appearing with it, in this manner:

Question: (herein the question is stated) If the bonds are approved, they will be payable from taxes on property or property ownership that are not subject to the limits of sections 11 and 11b, Article XI of the Oregon Constitution.

(2) The words of the statement required by subsection (1) of this section shall not be counted for purposes of ORS 250.035.

(3) The ballot title statement for any measure requesting elector approval of bonds, the principal and interest on which is to be payable from taxes imposed on property or property ownership that are not subject to the limitations of sections 11 and 11b, Article XI of the Oregon Constitution, shall contain, in addition to the other requirements of ORS 250.035 and this section, a reasonably detailed, simple and understandable description of the use of proceeds.

(4) If the election for a measure to which this section applies is to be conducted by mail, the front of the outer envelope in which the ballot title is mailed shall state, clearly and boldly printed in red, "CONTAINS VOTE ON PROPOSED TAX INCREASE." [1991 c.902 §119; 1997 c.541 §313]

250.038 Form of ballot title for measure authorizing imposition of local option taxes or establishing permanent rate limitation; elections by mail. In addition to meeting other applicable requirements of this chapter:

(1) The ballot title for a measure authorizing the imposition of local option taxes shall contain the statement required by ORS 280.070 (4)(a) and the information required by ORS 280.070 (5);

(2) The ballot title for a measure authorizing the establishment of a permanent rate limitation shall contain the information required by ORS 280.070 (6); and

(3) If the election on a measure authorizing the imposition of local option taxes or the establishment of a permanent rate limitation is to be conducted by mail, the front of the outer envelope in which the ballot title is mailed shall state, clearly and boldly printed in red, "CONTAINS VOTE ON PROPOSED TAX INCREASE." [1999 c.632 §25]

250.039 [Formerly ORS 250.055; repealed by 1995 c.534 §19]

250.040 [Repealed by 1957 c.608 §231]

250.041 Applicability of ORS 250.005 to 250.037 to counties and cities. ORS 250.005

to 250.037 apply to the exercise of initiative or referendum powers:

(1) Regarding a county measure, regardless of anything to the contrary in the county charter or ordinance.

(2) Regarding a city measure, regardless of anything to the contrary in the city charter or ordinance. [1983 c.514 §11]

250.043 Acceptance of initiative or referendum petition without original signatures. (1) Notwithstanding ORS 250.105, 250.215, 250.315 and 255.175, an initiative or referendum petition for which original signatures are otherwise required may be accepted by the appropriate filing officer for signature verification with photographic copies of one or more signature sheets if:

(a) The signature sheets containing the original signatures were stolen or destroyed by fire, a natural disaster or other act of God; and

(b) The photographic copy of each original signature sheet contains the number of the original signature sheets prescribed by the Secretary of State under ORS 250.015.

(2) As used in this section:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(b) "Filing officer" means the Secretary of State in the case of an initiative or referendum petition relating to a state measure, the county clerk in the case of an initiative or referendum petition relating to a county measure, the city elections officer in the case of an initiative or referendum petition relating to a city measure and the elections officer as defined in ORS 255.005 in the case of an initiative or referendum petition relating to a district measure. [1989 c.68 §13]

250.044 Actions challenging constitutionality of state measure to be filed in Marion County Circuit Court. (1) An action that challenges the constitutionality of a measure initiated by the people or referred to the people for a vote must be commenced in the Circuit Court for Marion County if:

(a) The action is filed by a plaintiff asserting a claim for relief that challenges the constitutionality of a state statute or an amendment to the Oregon Constitution initiated by the people or referred to the people under section 1 (1) to (4), Article IV of the Oregon Constitution;

(b) The action is commenced on or after the date that the Secretary of State certifies that the challenged measure has been

adopted by the electors and within 180 days after the effective date of the measure; and

(c) The action may not be commenced in the Oregon Tax Court.

(2) An action under subsection (1) of this section must be within the jurisdiction of circuit courts and must present a justiciable controversy. The plaintiff in an action subject to the requirements of this section must serve a copy of the complaint on the Attorney General.

(3) If an action subject to the requirements of this section is filed in a court other than the Circuit Court for Marion County, the other court, on its own motion or the motion of any party to the action, shall dismiss the action or transfer the action to the Circuit Court for Marion County.

(4) This section does not apply to any civil or criminal proceeding in which the constitutionality of a state statute or provision of the Oregon Constitution is challenged in a responsive pleading.

(5) If a judgment in an action subject to the requirements of this section holds that a challenged measure is invalid in whole or in part, a party to the action may appeal the judgment only by filing a notice of appeal directly with the Supreme Court within the time and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal under this subsection must note in the notice of appeal that the case is subject to this subsection.

(6) If a judgment in an action subject to the requirements of this section holds that a challenged measure is valid, a party to the action may appeal the judgment by filing a notice of appeal in the Court of Appeals within the time and in the manner specified in ORS chapter 19 for civil appeals. Notwithstanding ORS 19.405 (1), the party may move the Court of Appeals to certify the appeal to the Supreme Court, and the Court of Appeals acting in its sole discretion may so certify the appeal. If the Court of Appeals certifies the appeal to the Supreme Court, the Supreme Court shall accept or deny acceptance of the certification as provided in ORS 19.405 (2). [1997 c.794 §2]

STATE MEASURES

~~250.045 Submitting prospective petition; form of petition; statement regarding payment of petition circulators; signature sheet requirements. (1) Before circulating a petition to initiate or refer a state measure under section 1, Article IV, Oregon Constitution, the petitioner shall file with the Secretary of State a prospective petition. The prospective petition for a state~~

~~measure to be initiated shall contain statement of sponsorship signed by at least 25 electors. The signatures in the statement of sponsorship must be accompanied by a certificate of the county clerk of each county in which the electors who signed the statement reside, stating the number of signatures believed to be genuine. The Secretary of State shall date and time stamp the prospective petition and specify the form on which the petition shall be printed for circulation. The secretary shall approve or disapprove the form of any petition signature sheet within five business days after the signature sheet is submitted for review by the secretary. The secretary shall retain the prospective petition.~~

~~(2) The chief petitioner may amend the proposed initiated measure filed with the Secretary of State without filing another prospective petition, if:~~

~~(a) The Attorney General certifies to the Secretary of State that the proposed amendment will not substantially change the substance of the measure; and~~

~~(b) The deadline for submitting written comments on the draft title has not passed.~~

~~(3) The cover of an initiative or referendum petition shall designate the name and residence address of not more than three persons as chief petitioners and shall contain instructions for persons obtaining signatures of electors on the petition. The instructions shall be adopted by the Secretary of State by rule. The cover of a referendum petition shall contain the title described in ORS 250.065 (1). If a petition seeking a different ballot title is not filed with the Supreme Court by the deadline for filing a petition under ORS 250.065, the cover of an initiative petition shall contain the ballot title described in ORS 250.067 (2). However, if the Supreme Court has reviewed the ballot title, the cover of the initiative petition shall contain the title certified by the court.~~

~~(4) The chief petitioners shall include with the prospective petition a statement declaring whether one or more persons will be paid money or other valuable consideration for obtaining signatures of electors on the initiative or referendum petition. After the prospective petition is filed, the chief petitioner shall notify the filing officer no later than the 10th day after any of the chief petitioners first has knowledge or should have had knowledge that:~~

~~(a) Any person is being paid for obtaining signatures, when the statement included with the prospective petition declared that no such person would be paid.~~

~~(b) No person is being paid for obtaining signatures, when the statement included with~~

280.010 [Repealed by 1983 c.260 §13]

280.020 [Repealed by 1983 c.260 §13]

280.030 [Repealed by 1983 c.260 §13]

TAXATION FOR LOCAL PUBLIC IMPROVEMENTS

280.040 Definitions for ORS 280.040 to 280.145; use of certain tax revenues. (1) As used in ORS 280.040 to 280.145:

(a) "Local option tax" means a tax described under section 11 (4) or (7)(c), Article XI of the Oregon Constitution.

(b) "Subdivision" includes only such counties, municipal corporations, quasi-municipal corporations and civil or political corporations or subdivisions as are empowered by law to levy ad valorem property taxes, except that "subdivision" does not include an education service district.

(2) All ad valorem tax revenues that are received by any subdivision as a result of a levy under ORS 280.040 to 280.090 and that are derived from an ad valorem tax levied for purposes other than general operations shall be:

(a) Kept by the treasurer or other financial officer in a fund that is separate and distinct from other funds of the subdivision.

(b) Expended only for the purpose for which the taxes were imposed. [Amended by 1997 c.541 §302; 1999 c.632 §21; 1999 c.1094 §1]

Note: Section 4, chapter 1094, Oregon Laws 1999, provides:

Sec. 4. The amendments to ORS 280.040, 280.060 and 280.080 by sections 1 to 3 of this 1999 Act apply to local option taxes first imposed in property tax years beginning on or after July 1, 2000. [1999 c.1094 §4]

280.050 Providing funds for financing cost of services, projects, property and equipment. Funds may be obtained as prescribed in ORS 280.040 to 280.145 for the purpose of financing the cost of any service, project, property or equipment which a subdivision has lawful power to perform, construct or acquire, and of repairs and improvements thereto and of maintenance and replacement thereof. [Amended by 1967 c.203 §4]

280.055 Obtaining and advancing of funds to county service districts. Funds may be obtained by a county as prescribed by ORS 280.040 to 280.145 for the purpose of advancing funds to a district established under ORS 451.410 to 451.610 to finance the cost of any service facility which the district is authorized to construct, maintain and operate. [1969 c.646 §17]

280.057 Local option taxes for community colleges; maximum amount. A local option tax levied by a community college district or community college service district may not exceed the amount of reduction in

ad valorem property taxes caused under ORS 310.200 to 310.242. [1997 c.541 §308b]

Note: 280.057 was added to and made a part of 280.040 to 280.145 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

280.060 Levy of local option taxes outside constitutional limitation; duration of levy; approval of levy as approval of bonds. (1) Upon approval of a majority of the electors of a subdivision in a manner that qualifies under section 11 (8), Article XI of the Oregon Constitution, a subdivision may levy local option taxes outside the limitation imposed by section 11 (3), Article XI, Oregon Constitution, over the period of time that is authorized by the electors. The amount levied each year shall be:

(a) Uniform, or substantially so, throughout the period during which the taxes are levied; or

(b) Computed annually at the same dollar rate per thousand dollars assessed value in the subdivision, such rate to be declared in and made a part of the ballot measure to be submitted to the electorate.

(2) Notwithstanding subsection (1) of this section, a subdivision may certify for extension on the assessment and tax roll under ORS 310.060 a lesser amount of local option tax or a lesser rate of local option tax if the subdivision decides to collect less than the entire local option tax authorized by electors. The subdivision shall certify the lesser amount or rate in the written notice required to be made under ORS 310.060.

(3)(a) The period of time authorized by the electors shall not exceed five years or, if the local option tax is for capital projects, the lesser of:

(A) The expected useful life of the capital projects to be financed by the tax; or

(B) Ten years.

(b) A local option tax for capital projects does not exceed the expected useful life of the capital projects financed by the tax if the estimated weighted average life of the tax does not exceed the estimated dollar weighted average of the capital assets comprising the capital projects that are to be financed by the tax. The estimated dollar weighted average life of capital projects shall be calculated under rules of the Department of Revenue that ensure that a local option tax for capital projects is levied for no more than 10 years and no more than the useful life of the component of the capital projects financed by the tax that has the longest useful life.

(4)(a) All local option taxes authorized by ORS 280.040 to 280.145 that are for capital projects and that have a term of more than

five years shall be submitted to electors separately from local option taxes with a term of five years or less.

(b) For purposes of this subsection, "capital project" means the acquisition of land upon which to construct an improvement, the acquisition of a building, the acquisition or construction of improvements, the acquisition of an addition to a building which increases the square footage of the building, the construction of a building, the construction of an addition to an existing building which increases the square footage of the building or the acquisition of and installation of machinery and equipment which will become an integral part of a building or an addition to a building, the purchase of furnishings, equipment or other tangible property with an expected useful life of more than one year or a combination of those items.

(5) If a ballot measure authorizing a local option tax states that the taxing district may issue bonds that are payable from that tax, voter approval of the tax shall constitute voter approval of the bonds, except that the approval shall not entitle the taxing district to collect a greater amount of tax than the taxing district would have been entitled to collect if the ballot measure only authorized local option taxes and did not authorize bonds. If the local option tax is approved by voters in a manner that qualifies under section 11 (8), Article XI of the Oregon Constitution, then the taxing body may issue the bonds in a principal amount that, together with the estimated interest to be paid on the bonds while the bonds are outstanding, does not exceed the revenues estimated to be received from the local option tax levy. A taxing district may pledge the revenues received from the local option tax and the taxing district's full faith and credit to pay bonds authorized under this subsection. [Amended by 1953 c.134 §2; 1977 c.730 §1; 1979 c.241 §24; 1981 c.804 §79; 1989 c.658 §1; 1997 c.541 §303; 1999 c.21 §6; 1999 c.559 §4; 1999 c.1094 §2]

Note: See note under 280.040.

280.070 Manner of holding elections for local option tax or permanent rate limit; additional statements in ballot title. (1) An election within a county for the purpose of approving a tax levy or tax rate under ORS 280.060 shall be called by the county court or board of county commissioners and shall be held on a date specified in ORS 203.085.

(2) An election within a city for the purpose of approving a tax levy or tax rate under ORS 280.060 or under section 11 (3)(c), Article XI of the Oregon Constitution, shall be called by the governing body of the city and held on a date specified in ORS 221.230.

(3) An election within a political subdivision other than a county or city for the purpose of approving a tax levy or tax rate under ORS 280.060 or under section 11 (3)(c), Article XI of the Oregon Constitution, shall be called by the governing body of the subdivision and held on a date specified in ORS 255.345.

(4)(a) The ballot title for a measure authorizing the imposition of local option taxes shall contain the following additional statement:

This measure may cause property taxes to increase more than three percent.

(b) The statements required by this subsection shall not be considered for purposes of the word count limitations under ORS 250.035.

(c) The statements required by this subsection shall be placed after the question on the ballot title.

(5) As part of the question, the ballot title for a measure authorizing the imposition of local option taxes shall state:

(a) The length in years of the period during which the proposed local option tax will be imposed.

(b) The first fiscal year in which the proposed local option tax will be imposed.

(6) As part of the question, the ballot title for a measure authorizing the establishment of a permanent rate limitation shall contain the following information:

(a) The tax rate per \$1,000 of assessed value of the proposed permanent rate limitation.

(b) The first fiscal year in which the proposed permanent rate limitation will be imposed.

(7) The ballot title for a measure authorizing the imposition of local option taxes or a permanent rate limitation shall be in compliance with ORS 250.036. [Amended by 1983 c.350 §133; 1997 c.541 §304; 1999 c.632 §22]

280.075 Ballot statements for local option tax measures. (1) Notwithstanding any other law and when not inconsistent with or otherwise provided for in the Oregon Constitution, whenever a proposed local option tax is submitted to a vote of the people by any subdivision, the statement in the ballot title for the measure that explains the chief purpose of the measure and gives reasons for the measure shall state the total amount of money to be raised by the proposed local option tax, in dollars and cents. If the statement in the ballot title for the measure

submitted includes an estimated tax impact, it shall be based on the most current estimate of assessed value from the county assessor. The measure shall bear the statement: "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate."

(2) Subsection (1) of this section does not apply to a local option tax described in ORS 280.060 (1)(b). For a levy described in ORS 280.060 (1)(b), an estimate of the total amount of money to be raised for each year of the proposed local option tax shall be stated in dollars and cents. If the levy described in ORS 280.060 (1)(b) raises more money than estimated, the excess collections above that estimate shall be considered a budget resource for the levy fund in the next fiscal year of the subdivision. This section has no application to elections and levies with respect to bonds, for which provision is made in ORS 287.004 to 287.022 and 287.052 to 287.488 or other laws.

(3) The statement or statements required by subsections (1) and (2) of this section shall be added to and made a part of the 175-word statement required by ORS 250.035. The number of words contained in the statements described in subsections (1) and (2) of this section shall not be included in the 175-word limitation. [Formerly 310.395]

Note: 280.075 was added to and made a part of 280.040 to 280.145 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

280.080 Contents of order, resolution or ordinance calling election. The order, resolution or ordinance, as the case may be, pursuant to which the election required by ORS 280.060 is called and held, shall set forth:

(1) The purpose for which the funds to be provided by the tax levies are to be expended.

(2) The estimated total outlay for such purpose.

(3) The period of time authorized by the electors pursuant to ORS 280.060 (3). [Amended by 1977 c.730 §2; 1997 c.541 §305; 1999 c.1094 §3]

Note: See note under 280.040.

280.090 Submission of several proposals to impose local option taxes. If more than one proposal to impose local option taxes is submitted to the electors at the same election, the several ballot measures shall be voted upon separately. However, not more than four separate ballot measures proposing local option taxes may be submitted to the electors under the provisions of ORS 280.040 to 280.145 within a single cal-

endar year. [Amended by 1979 c.241 §25; 1981 c.804 §80; 1999 c.21 §7]

280.100 [Repealed by 1997 c.308 §38]

280.110 [Repealed by 1997 c.308 §38 and 1997 c.541 §308c]

280.120 [Repealed by 1997 c.308 §38 and 1997 c.541 §308c]

280.130 [Repealed by 1997 c.308 §38 and 1997 c.541 §308c]

280.140 [Repealed by 1997 c.308 §38]

280.145 Serial levy under former law. Notwithstanding the amendments to ORS 280.040, 280.060, 280.070 and 280.080 by sections 302 to 305, chapter 541, Oregon Laws 1997, a serial levy described in section 11 (7)(b), Article XI of the Oregon Constitution, may be levied by the subdivision, including a school district, as provided in ORS 280.040 to 280.140 (1995 Edition). [1997 c.541 §308; 1999 c.21 §8]

280.150 Appropriating money and issuing bonds to construct, operate and maintain joint facilities. Incorporated cities, school districts and counties of this state may jointly, in such manner as they shall agree upon, construct, acquire, own, equip, operate and maintain facilities which will directly aid each participating governmental unit in performing a duty or duties imposed upon it or aid in exercising a power or powers conferred upon it, and may appropriate money and may issue bonds therefor.

280.160 [Formerly 280.990; repealed by 1997 c.308 §38]

280.250 [1985 c.806 §1; 1987 c.769 §14; renumbered 285.067 in 1991]

280.255 [1985 c.806 §3; 1989 c.908 §28; renumbered 285.070 in 1991]

280.260 [1985 c.806 §2,4; 1989 c.908 §29; renumbered 285.075 in 1991]

280.265 [1985 c.806 §5; 1989 c.908 §30; renumbered 285.080 in 1991]

280.270 [1985 c.806 §13; 1989 c.908 §31; renumbered 285.065 in 1991]

280.310 [1975 c.316 §1; 1983 c.459 §1; renumbered 285.310 in 1991]

280.315 [1975 c.316 §2; 1983 c.459 §2; 1989 c.908 §32; renumbered 285.315 in 1991]

280.320 [1975 c.316 §3; 1977 c.147 §1; 1979 c.182 §8; 1981 c.282 §1; 1983 c.459 §9; 1985 c.806 §6; 1987 c.158 §38; 1989 c.908 §33; 1991 c.878 §1; renumbered 285.320 in 1991]

280.325 [1975 c.316 §4; 1989 c.908 §34; renumbered 285.325 in 1991]

280.330 [1975 c.316 §10; 1989 c.547 §1; 1989 c.908 §35; renumbered 285.330 in 1991]

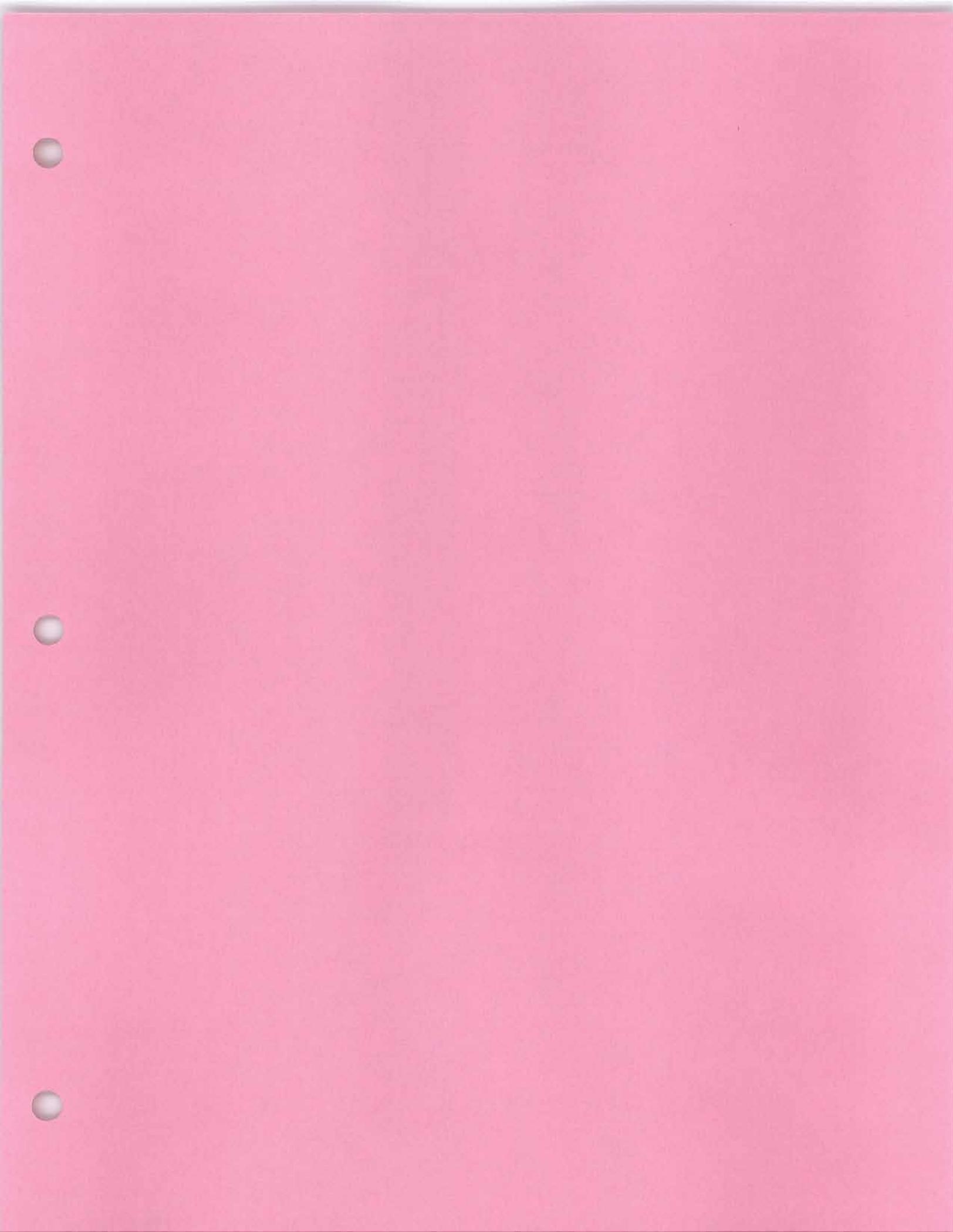
280.335 [1975 c.316 §7; 1983 c.459 §10; renumbered 285.335 in 1991]

280.340 [1975 c.316 §8; 1989 c.908 §36; renumbered 285.340 in 1991]

280.345 [1975 c.316 §9; 1983 c.459 §11; renumbered 285.345 in 1991]

280.350 [1975 c.316 §6; 1983 c.459 §3; renumbered 285.350 in 1991]

280.355 [1975 c.316 §5; 1977 c.147 §2; renumbered 285.355 in 1991]



tive action goals for disadvantaged or minority groups.

(2) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or administrative rule, a public contracting body may limit competitive bidding on any public contract for procurement of goods and services or on any other public contract estimated to cost \$50,000 or less to contracting entities owned or controlled by persons described in subsection (3) of this section.

(3) As used in this section "affirmative action" is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. [1975 c.771 §32; 1981 c.325 §4; 1985 c.724 §3; 1989 c.224 §41]

279.054 [Repealed by 1975 c.771 §33]

279.055 Local contract review board; creation; power. (1) Every county by ordinance may create a local contract review board for the county. The board so created may consist of the governing body of the county or at least three persons appointed by and serving at the pleasure of that governing body.

(2) Any other local public agency having a governing body may adopt a resolution or ordinance creating its governing body as a local contract review board for that public agency. The local public agency shall file a copy of the resolution or ordinance with the county governing body. The board created by the local public agency shall not exercise its powers under subsection (4) of this section until the resolution or ordinance has been filed pursuant to this subsection.

(3) A county board created pursuant to subsection (1) of this section shall serve as the local contract review board for local public agencies that do not create their own boards pursuant to subsection (2) of this section, and that have their principal administrative offices within the county. The county board may impose fees on local public agencies that it serves under this subsection if the ordinance creating the county board authorized such fees. The fees shall be prescribed by rule adopted under subsection (5) of this section and shall be calculated to reimburse the county for its costs in serving the local public agencies.

(4) Except as provided in ORS 279.019 (1) and (2) and the authority to prescribe the standard prequalification application forms in ORS 279.039 (1), boards created under this section shall have all the powers granted the Oregon Department of Administrative Services and the Director of the Oregon Department of Administrative Services under

ORS 279.011 to 279.063. The board shall exercise such powers only after it has adopted rules pursuant to the requirements of subsection (5) of this section.

(5) Each board created under this section shall have rulemaking authority to carry out the powers and duties of the board under ORS 279.011 to 279.063. The rules shall be adopted in the manner prescribed in the resolution or ordinance creating the board.

(6) A local public agency, other than a county, by resolution or ordinance may rescind its action to create a local contract review board. The rescission shall take effect on the date a copy of the resolution or ordinance is filed with the county governing body or on the date stated therein, whichever is the later date. After the date of filing or the date specified, the county board, created pursuant to subsection (1) of this section, shall serve as the local contract review board for the public agency.

(7) Notwithstanding subsection (3) of this section, a local public agency may contract with another public agency to serve as its local contract review board with the powers and duties the local board has over contracts of its own local public agency. Notice of the contract and of its termination shall be given to the county in the same manner as notice is given to the county under subsections (2) and (6) of this section. [1975 c.771 §34(2); 1979 c.647 §1; 1979 c.804 §6; 1983 c.690 §14]

279.056 When federal law and rules prevail over ORS 279.011 to 279.063. Notwithstanding any provision of ORS 279.011 to 279.063, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of ORS 279.011 to 279.063 or require additional conditions in public contracts not authorized by ORS 279.011 to 279.063. [1979 c.504 §2]

~~**279.057 Contracts for services of engineers, architects and land surveyors; selection procedure; compensation; applicability only to state agencies.** (1) A contract entered into by a public agency for the consulting services of registered professional engineers, registered architects or registered professional land surveyors is a personal service contract.~~

~~(2) A public agency shall select consultants described in subsection (1) of this section on the basis of qualifications for the type of professional service required. A public agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the public agency has selected a candidate under subsection (3) of this section.~~

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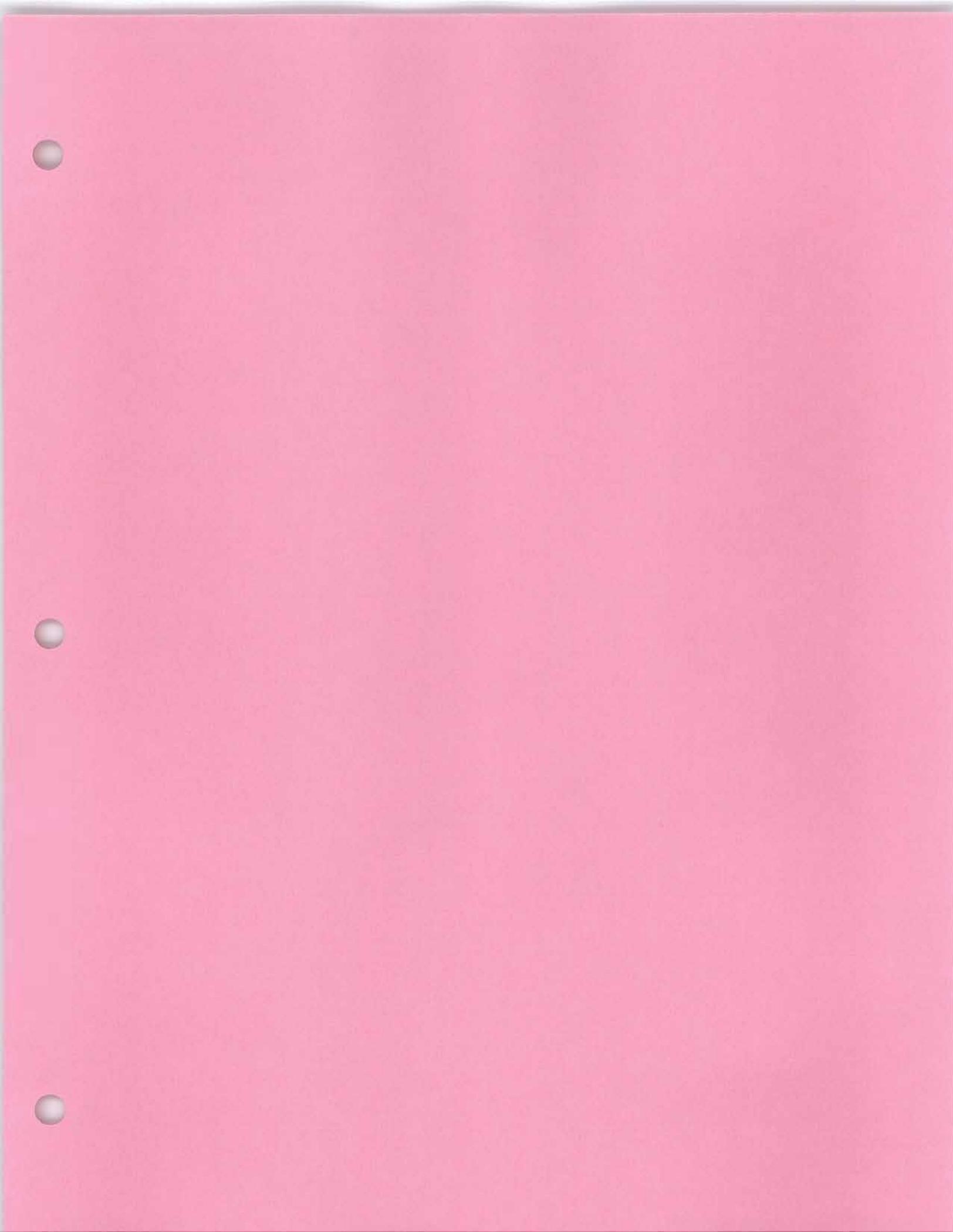
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Public Works Projects

The term "public works" refers to the construction, reconstruction, major renovation or painting done by or for a public agency.

If the project primarily serves the public interest, then it is "by or for" a public agency even if the property involved is not owned by the agency. ORS 279.348(3); ORS 279.350(1); OAR 839-016-0004(17).

PWR law does not regulate the reconstruction or renovation of privately-owned property that a public agency leases, but it does cover construction on it. For example, adding square footage to such a property is considered construction subject to PWR regulation. OAR

839-016-0004(17),(20).

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Covered Activities

PWR coverage is determined by the type of work performed on the project, not by what a contract is called. For example, if a project includes covered activities, such as rewiring a major portion of a building, and meets the other jurisdictional requirements of PWR laws, the entire project is covered.

- **Construction**

Construction includes the initial building of structures and roads. OAR 839-016-0004(5).

- **Reconstruction**

Reconstruction includes the restoration of existing buildings and the restoration, rebuilding or resurfacing of existing roads. OAR 839-016-0004(19).

- **Major Renovation**

Major renovation includes any remodeling or alteration of existing structures or roads that cost \$25,000 or more. OAR 839-016-0004(9).

- **Hazardous Materials Spills**

PWR laws cover the clean up of hazardous materials spills if the project includes some construction or reconstruction. PWR law does not cover contracts that only include picking up and hauling away hazardous material.

- **Maintenance contracts**

General maintenance work, such as sweeping, cleaning, and landscaping is not covered unless it is done as part of a construction, reconstruction or major renovation project. For example, PWR laws do not apply if maintenance landscaping work such as mowing or pruning is performed on the grounds of an existing building where no other work is being performed. If the same landscaping is part of a major building renovation, then it is covered work.

- **Demolition**

PWR law covers demolition work only if it is to prepare for planned construction or renovation. If no construction is planned to replace the demolished property, the demolition is exempt.

- **Travel time**

Employees do not earn PWR wages for travel time unless they are traveling between the work site and a dedicated pit, tool yard or another covered site. If employees are normally entitled to travel time (because they are required to work more than 30 miles away from their normal work station and are not required to stay overnight, for example), then the employer must pay them an agreed upon rate which is at least minimum wage.

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Excluded Agencies

Contracts with certain state agencies are not covered by PWR laws at all, although other wage-related regulations often apply. The PWR exemption applies only if the contract is with the agency itself. For example, while the Oregon State Lottery Commission is exempt, a project is not exempt merely because it is funded with lottery money. Agencies that are not regulated by PWR laws are:

- Oregon State Lottery Commission
- Travel Information Council
- People's Utility Districts

Peoples Utility Districts, while exempt from PWR laws, do have their own, similar laws that apply to their projects. Oregon Health Sciences University, although exempt from Chapter 279, must ensure that prevailing wages are paid to workers.

Excluded Workers

It is not necessary to pay inmate workers prevailing wages, even on covered projects. OAR 839-016-0100(4).

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No Joint Jurisdiction With Federal Government

State PWR laws apply unless the project is regulated under the Davis-

Bacon Act. Federal and state prevailing wage laws do not both apply to the same project. ORS 279.357(1)(b); OAR 839-016-0100(1)(b).

State overtime provisions, including daily overtime, apply to state and local government contracts even if they are otherwise regulated under the Davis-Bacon Act.

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Only Projects Costing \$25,000 or More Are Covered

PWR law regulates only those projects costing \$25,000 or more. This amount is based on the cost of the entire project, not individual contracts. ORS 279.357(a); OAR 839-016-0100(1)(a).

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How Prevailing Wage Rates Are Determined

Annual Surveys Are Sent to Employers.

BOLI uses data from an annual survey to set the prevailing wage rates. The agency sends wage surveys to contractors in 14 regions of the state to find out what they are paying to different types, or classifications, of workers. If the survey results do not provide enough information to determine the prevailing wage rates, then the agency considers other information, including prevailing wage rates determined by the United States Department of Labor. ORS 279.348; ORS 279.359.

Wage Rates and Work Classifications

The prevailing practice of the industry determines how work is classified. Wage rates for each classification are listed as a base rate and an hourly fringe rate. Rates are determined for a number of classifications. It is important to note that it is the work performed by the employee, not the worker's title or qualifications, that determines which classification applies.

Rate Book Published Twice Annually

BOLI publishes the prevailing wage rates twice a year, and periodically updates them to reflect recent labor agreements or other changes. BOLI provides the wage rate publication free of charge. State law requires public agencies to include applicable prevailing wage rates in the contract specifications of covered projects and contractors to post them at all PWR job sites.

Addition of Trade Classification to the Rate Book

PWR law requires the submission of a formal request to add a trade into the prevailing wage rate determinations. PWR law covers trades and occupations found in the construction industry. Anyone may request the consideration of an additional classification by writing to the PWR coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, 800 NE Oregon Street #32, Portland, OR 97232. The request must include the name of the proposed trade, the minimum education required, a description of the skills required and the tools used.

Occasionally the classification process calls for a complete study of the proposed trade. The bureau's PWR coordinator conducts the study and makes recommendations to the commissioner. OAR 839-016-0006.

Special Wage Determinations

Sometimes public contracting agencies require the use of a trade not normally included in the wage determinations. If a planned public works project requires a trade that does not have an established classification or rate, the contracting agency may submit a written request to BOLI for consideration. This request must describe the work to be done and identify the requested trades. If BOLI agrees that a special determination is needed, it works with the agency to conduct a wage survey. The agency conducts the survey and submits the results to the PWR coordinator. This data is used to help the Commissioner establish the appropriate classification and rate. OAR 839-016-0007.

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Responsibilities of the Contracting Agency

Public agencies must comply with a host of legal contracting requirements. This guide covers only PWR law. The Oregon Attorney General's Model Public Contract Rules Manual has information about other statutes, rules and guidelines that apply to public agency contracting.

Listing and Filing of Planned Public Improvements

Agencies must submit to BOLI a list of public improvements it plans to fund during the coming budget period. The agency must submit the list at least 30 days before it adopts a budget, and should revise the list if its plans change. If an agency plans to use its own personnel and equipment to perform any project estimated to cost more than \$125,000, it must also provide documentation showing that it is less expensive for the agency to use its own resources than it is to contract out the project. Once filed, all documents are public records. Filings should be made with the Prevailing Wage Rate Unit, Wage and Hour

Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, Oregon 97232. OAR 839-016-0008.

Notice of Award of Public Works Contract

Agencies must notify BOLI within 30 days of awarding any public works contract subject to PWR law. Agencies must file BOLI's Notice of Award Form (WH-81) with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, Oregon 97232. ORS 279.363; OAR 839-016-0013.

Contracts and Contract Specifications

Require Certain Items

For PWR projects, public contracting agencies must include certain items in the contract specifications and in the contract.

Contracts:

- Must require that workers will be paid the PWR.
- Must require the contractor to pay BOLI a PWR fee. ORS 279.352(2); OAR 839-016-0020(1)(f).
- A statement that if the contractor fails to pay for labor and services then the agency can pay and withhold these amounts from payments to the contractor, if the contractor fails to pay them. OAR 839-016-0020(1)(a).

Bid specifications for the contract:

- Must require that the contractor pays BOLI a PWR fee. ORS 279.352(2); OAR 839-016-0020(2)(b)
- Must include a listing of the applicable prevailing wage rates.
- Incorporating the rates by reference is not enough. ORS 279.352(1), OAR 839-016-0020(2)(a).
- A statement that the contractor pay weekly, holiday (including weekends) and daily overtime as required. OAR 839-016-0020(1)(b).

Contracting agencies are liable for any unpaid prevailing wages unless they have included a statement in the contract documents, such as the contract, specifications or the advertisement for bid that PWR laws apply. ORS 279.356(3); OAR 839-016-0080(3).

Note: Contractors are jointly liable for any unpaid prevailing wages if they had notice that the project is PWR covered.

Ensuring a Bond is Filed When Required

The contracting agency should verify that the contractor files a bond, or posts another security when required. If the agency fails to do so, it is jointly liable with the contractor for any unpaid prevailing wages. The agency can pay any claims for unpaid labor and deduct the amount of the claims from the amount it pays the contractor. ORS 279.542.

BOLI Prohibits Dividing Projects to Avoid PWR

Contracting agencies may not divide a project to try to avoid PWR law. ORS 279.357(2); OAR 839-016-0310. BOLI treats separate contracts for the same project as a single project for PWR purposes. BOLI can issue an Order compelling the violating agency to treat the contracts as a single project.

The bureau looks at a number of factors to decide if separate contracts actually constitute a single project, such as:

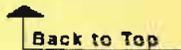
- The physical location of the work sites.
- Whether the contractors are substantially the same throughout the contracts.
- How the agency and the contractors treat and administer the project.
- Whether the contracts include several types of improvements or structures.
- The anticipated outcome of the contracts.
- Whether the contracts are performed in one time period or in several phases as part of a larger project.
- How similar the structures or improvements are and whether they combine for a single project or overall purpose.
- Any other relevant factors.

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A Checklist for Contracting Agencies

- Include the prevailing wage rate fee, rates and other required language in the contract specifications.
- Submit the Notice of Award to BOLI within 30 days of awarding the contract.
- Submit the List of Planned Public Improvements.
- Verify that none of the contractors or subcontractors working on the project are on BOLI's *List of Ineligibles*. The list of debarred contractors is in the PWR rate book.
- Require that the contractor is bonded or obtain a cashier's check

- or certified check from the contractor, unless exempt.
- Verify that the project manager has knowledge of construction and worker classifications.
 - Withhold sufficient retainage.
 - Verify that subcontractors know that the job is a prevailing wage rate job.
 - Confirm that the correct prevailing wage rates and the details of any benefit plans are conspicuously posted.
 - Verify that all contractors are using the correct work classifications.
 - Confirm that all contractors are filing complete and accurate certified payrolls.
 - Examine the filed certified payroll records to make sure that contractors are paying employees the correct prevailing wage rate.



Responsibilities of the Contractor

Payment of Prevailing Wages

Contractors must pay employees no less than the rates published in the prevailing wage rate book for the type of work they perform. ORS 279.350; OAR 839-016-0035.

Contractors are in compliance with PWR requirements if the total amount paid to the employee in wages and in qualified fringe benefits meets or exceeds the total of base and overtime wages owing, plus fringe benefits owing, published in the rate book. For example, if the base rate is \$20, the hourly fringe rate is \$4 per hour and the employee worked eight hours a day, Monday through Friday, the employee is entitled to \$960 [(\$20 x 40) + (\$4 X 40)]. The employer can satisfy this obligation by paying \$960 in wages to the employee, or \$600 in wages to the employee and \$360 to a fringe program, or \$700 in wages and \$260 in fringe benefits--or any other similar combination of wages and fringe benefits. The rates in effect when a project is first advertised for bid apply for the duration of that project.

Overtime

Workers employed on a PWR covered project must be paid overtime for hours worked on Saturdays, on legal holidays (Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) and for hours worked over 40 in a week. If an employer has established a regular four-day work schedule of Monday through Thursday or Tuesday through Friday, then overtime is due for any hours worked over 10 in a day. For all other schedules, or if a 4-day

schedule is not followed due to weather, scheduling or other circumstances, overtime is owed for any hours worked after eight in a day for that week. If, however, a collective bargaining agreement applies and has different overtime provisions, the provisions in the bargaining agreement will govern. ORS 279.334(1); OAR 839-016-0004 (11).

Overtime pay is 1.5 times the hourly base rate. The fringe rate does not have to be paid at time and a half.

Hourly overtime rate = (1.5 x base rate) + hourly fringe amount

If an employee earns more than one base rate of pay for the day/week, then the daily/weekly overtime owed, in addition to the regular straight time wages, is based on a *weighted average* of the hourly base rates earned. Examples of how to calculate overtime are included in the administrative rules in Appendix F, and an example for weighted average overtime calculations is in Appendix D.

Employees With Multiple Classifications

Employees who perform more than one classification of work must be paid the applicable prevailing wage rate for the time spent working in each classification. It is the employer's responsibility to track the hours spent by each employee doing each job classification separately and to report them separately on the certified payroll. If this is not done, the employee should be paid for all hours worked at the highest rate the employee earned that week.

Supervisors

Employees who perform manual labor less than 20 percent of the time do not need to be paid prevailing wages for that week. If they spend more than 20 percent of the time performing manual labor, however, the time needs to be paid at the prevailing wage rate. OAR 839-016-0035 (3).

Apprentices and Trainees

Workers may be paid the applicable apprentice or trainee rate only if they have been registered as an apprentice or trainee by the Apprenticeship and Training Division of BOLI or the federal Bureau of Apprenticeship and Training. OAR 839-016-0060; OAR 839-016-0065. Contractors must comply with the ratio of journeymen to apprentices contained in the apprenticeship standards. Contractors who do not comply with these ratios must pay all apprentices the full prevailing wage rate. In trades in which apprentices customarily receive only a portion of the full fringe benefit amount, registered apprentices may be paid the base rate pursuant to their apprenticeship agreement and the fringe benefit rate according to the prevailing practice.

Owners

The same rules apply to business owners as to other workers. Owners, supervisors or other employees who perform manual labor less than 20 percent of the time do not need to be paid prevailing wages for that week. If they spend 20 percent or more of their time during a week performing manual labor, they need to be paid at least the prevailing wage rate, and their time must be reported on the certified payroll. PWR law exempts "owner-operators" of trucks. Drivers who own and operate their own trucks, and who are independent contractors, do not need to be paid prevailing wages for the time spent driving their own trucks. Operators of other equipment or motor vehicles are not exempt.

Site of Work

Contractors must pay prevailing wages for work done at the "site of work." The site of work is the location of the structure after construction is complete. For purposes of PWR law, site of work also includes pits, batch plants, tool-yards and similar locations that are within a reasonable distance of the structure. Any such locations established after the project was first advertised for bid is considered "dedicated" and part of the site of work. Even if the pit, batch plant or tool-yard was opened before the first advertisement, it is still dedicated if it is used primarily for the PWR project. OAR 839-016-0004(21); OAR 839-016-0035(4)(5).

Truck Drivers

Truck drivers performing delivery for commercial suppliers are not generally due prevailing wages for incidental work performed on the project site. These workers are due prevailing wages only if they spend 20 percent or more of their time that workweek working on the project site. OAR 839-016-0035(6).

Fringe Benefits

Employers may claim credit for "bona fide" fringe benefits they provide to their employees. The employer's contribution must be made for the benefit of the employee, must not be required by law, and must be made on a regular basis (at least quarterly). Plans that provide for delayed vesting or have eligibility requirements are "bona fide" if they meet the other requirements. Safety training, drug testing, state industry council contributions, trade promotion funds, per diem payments and workers' compensation insurance do not qualify as fringe benefits. ORS 279.348(4); OAR 839-016-0004(8).

Examples of Bona Fide Fringe Benefits

- Health and welfare plans.

- Vacation plans.
- Pension plans.
- Apprenticeship training.

See Appendix A for instructions to calculate the amount that may be credited for payments into fringe benefit programs.

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Required Postings

Contractors **must** post the applicable prevailing wage rates, fringe benefit plan and work schedule in a conspicuous place at the work site so workers have ready access to the information. This is a minimum requirement and the bureau encourages contractors to make this information as accessible as possible to employees.

Prevailing Wage Rates

All prevailing wage rates that apply to the project **must** be posted at the job site. Every contractor on the site is responsible for this posting ORS 279.350(4); OAR 839-016-0033(1).

Details of Fringe Benefit Programs

A contractor **must** post the details of the fringe benefit program if any contributions are made to a third party for fringe benefits. The posting should include the plan administrator, information about how to file a claim and whom to contact for additional information. ORS 279.350(5); OAR 839-016-0033(3).

Work Schedule

The contractor **must** give workers the regular work schedule (days of the week and number of hours per day) in writing, before beginning work on the project. ORS 279.334(1)(b). The contractor can provide the schedule at the time of hire, prior to starting work on the contract, or by posting the schedule at the work site, along with the prevailing wage rate information and any fringe benefit information. OAR 839-016-0034.

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Prevailing Wage Fee

Contractors contracting directly with the public agency must pay a fee of

one-tenth of one percent (.001) of the contract price to BOLI within 60 days of starting work on the project or within 10 days of receiving the first progress payment, whichever is earlier. There is a minimum fee of \$100 and a maximum of \$5,000. Subcontractors who do not contract directly with the public agency are exempt from this fee. BOLI issues a Certificate of Payment as proof of payment.

The contractor must submit a Fee Adjustment Form within 30 days of receiving the final payment on the project when contract change orders increase or decrease the original contract by \$100,000 or more. If the fee would change by \$100 or more, then the contractor must pay any additional fee with the adjustment form. If BOLI owes the contractor a refund, the bureau issues it once the adjustment is processed. If a contract does not have a "hard" bid amount, the contractor bases the initial fee on the guaranteed maximum. Once the project is complete, the contractor can file an adjustment that reflects the actual cost of the project. ORS 279.375; OAR 839-016-0200 *et seq.*

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Certified Payroll

Filing requirements

Every employer on a covered project must file certified payroll records with the contracting agency. The first filing is due within 15 days of starting work on the project and then every 90 days thereafter. Contractors must file their last certified payroll before the final inspection of the project by the agency (or contractor in the case of a subcontractor). When contractors work on a project for 15 days or less, they must file certified payroll for all work performed on that project. State PWR law does not require contractors to file weekly certified payroll records. However, contractors should check contract conditions carefully because some public agencies do require weekly filings as does the federal Davis-Bacon Act. ORS 279.354; OAR 839-016-0010.

Certified Payroll Form

To help employers satisfy the filing requirement, Form WH-38 is included in each PWR rate book. BOLI does not require contractors to use this form, but contractors must supply all information the form requests and this information must be certified. Employers using their own forms or reports can comply with the certification requirement by attaching and completing a copy of the certification from the WH-38 form to their filing. Employers must submit the hours worked each day by each employee, his or her name, address, the pay rate, work

classification, gross pay to the employee and the amount contributed to any third party for fringe benefits (and the type of benefit provided).

To meet filing requirements, the employer must sign the certified payroll to confirm that the information is true and complete. Unsigned reports do not satisfy the filing requirement. Submitting false or incomplete information can be the basis for civil penalties or debarment.

Multiple Work Classifications

If an employee works in more than one classification, the employer must carefully track how much time is spent doing each type of work. Employers must pay employees the applicable prevailing rate for the hours they spend in each work classification. If the employer's records do not clearly show the time spent in each classification, the employer must pay the worker at the highest classification rate for all hours worked.

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A Checklist for Contractors

- Respond promptly and accurately to communications from BOLI.
- Ensure that all subcontractors and employees know that they are working on a prevailing wage rate job.
- Submit the prevailing wage rate fee to BOLI within 10 days of the first progress payment or 60 days of starting work, whichever is earlier.
- Ensure that supervisors and foremen know how to properly classify workers.
- Keep accurate daily records. Show the amount of time each employee spends in each classification of work.
- Review employee time cards often to ensure times and duties are reported accurately. Have employees sign in and out for the day and for lunch.
- File accurate and complete certified payroll with the public agency.
- Post the prevailing wage rates in a conspicuous place.
- Notify employees of their work schedules, in writing and prior to beginning work.
- Post the details of any benefit plans in a conspicuous place.
- Return wage surveys promptly and with accurate information.

Additional Items for Prime Contractors:

- Review the certified payroll and oversee the job site to confirm that subcontractors are properly classifying and paying their workers.
- Post any required performance bond.

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Prevailing Wage Rate Law Enforcement

BOLI's enforcement goal is compliance. The bureau has a variety of enforcement tools that range from education and training to civil penalties, debarment and other sanctions. BOLI uses the appropriate sanction to fit the violation. For example, if a contractor or agency accidentally violates PWR laws, BOLI considers the contractor's willingness to cooperate and correct the problem when it determines an enforcement action. In such cases, BOLI can direct the agency or contractor to take a training course on PWR laws, and ask for a commitment of future compliance. For willful or repeated violations of the law, it is more likely for BOLI to impose civil penalties or debar a violating contractor from bidding or working on public works projects for three years. ORS 279.355(2); OAR 839-016-0030.

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Agency Liability

A contracting agency must give adequate notice to the contractor that PWR laws apply to the project. Failure to treat the project as subject to PWR law can make the agency liable for unpaid wages, civil penalties or orders to ensure compliance with the law.

Unpaid Prevailing Wages

The contracting agency is liable for any unpaid prevailing wages unless the contract documents contain a statement requiring the contractor, and all subcontractors, to comply with ORS 279.350. If the contractor had notice that the project is PWR covered, the contractor is jointly liable with the public agency for any unpaid prevailing wages. If a contract requires a bond or other security and the agency fails to obtain it, the agency is jointly liable with the contractor, for any unpaid prevailing wages if it authorizes a contract that requires a bond or other security when the security has not been posted. ORS 279.542.

Civil Penalties for Contracting Agencies

BOLI can impose civil penalties of up to \$5,000 per violation. ORS 279.370; OAR 839-016-0510 *et seq.* Violations include:

- Failing to include in the contract provisions that workers shall be paid prevailing wages.
- Failing to include the applicable prevailing wage rates in the contract specifications.
- Failing to include a contract specification that the contractor pays a PWR fee to BOLI.
- Failing to notify BOLI when a contract is awarded.
- Awarding a contract to a debarred contractor.
- Failing to state in the contract documents that PWR laws apply and that the contractor must comply with them.
- Dividing a project to avoid paying the PWR.
- Circumventing PWR laws in any way.

Compelling Compliance

BOLI may issue an Order compelling an agency to comply with PWR laws. ORS 279.357.

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Contractor Liability

If a contractor or subcontractor does not fulfill obligations under PWR laws, there are a number of possible consequences.

Unpaid Prevailing Wages

Any contractor failing to pay prevailing wages as required is liable for the amount of underpayment. ORS 279.356(1); OAR 839-016-0080(1).

Liquidated Damages

Employers may also be liable for liquidated damages equal to the amount of unpaid wages. For example, if a contractor underpaid an employee by \$1,500, the contractor is responsible for the unpaid wages plus an equal amount in liquidated damages for a total of \$3,000. The liquidated damages are twice the unpaid overtime wages if payroll records have been falsified. ORS 279.356(1), ORS 279.334(9), OAR 839-016-0080(2).

Prime Contractor Liability

for the Violations of a Subcontractor

If a subcontractor fails to pay prevailing wages, any employee may file a claim against the prime contractor's bond. The prime contractor may be

responsible for any underpayment of the subcontractor's employees.
ORS 279.356(2).

Civil Penalties

BOLI may impose civil penalties for violations of the prevailing wage statutes or administrative rules, even if there was no underpayment of wages. Such violations include failing to respond to a wage survey, to post required information at the job site or to file certified payroll reports. BOLI can impose penalties up to \$5,000 per violation. If violations are ongoing, each day counts as a separate violation. ORS 279.370; OAR 839-016-0510 *et seq.*

BOLI considers many factors when imposing civil penalties, including:

- Previous or repeated violations.
- The severity of the violations.
- Whether the contractor knew, or should have known, about the violations.
- How difficult it would have been for the contractor to comply.
- The contractor's response to the violations.

It is important for contractors to cooperate with investigations and correct any violations as quickly as possible to reduce any civil penalties that the bureau may impose.

Warning Letters

BOLI may send warning letters to contractors who have violated PWR law. BOLI imposes serious penalties on contractors who commit violations after receiving a warning letters, up to and including maximum civil penalties and debarment.

Debarment

For willfully violating PWR laws, BOLI can debar a contractor from receiving any public contracts (except for federal contracts) in Oregon for up to three years. The bureau can also debar personally the officers of a debarred corporation. BOLI can debar a subcontractor, even if the violation was not willful, if the subcontractor did not pay prevailing wages to workers and the prime contractor had to pay them. BOLI maintains a list of debarred contractors, referred to as the "list of ineligible." This list is included in each published rate book. ORS 279.361; OAR 839-016-0085 *et seq.*

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Bacon Act. Federal and state prevailing wage laws do not both apply to the same project. ORS 279.357(1)(b); OAR 839-016-0100(1)(b).

State overtime provisions, including daily overtime, apply to state and local government contracts even if they are otherwise regulated under the Davis-Bacon Act.

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Only Projects Costing \$25,000 or More Are Covered

PWR law regulates only those projects costing \$25,000 or more. This amount is based on the cost of the entire project, not individual contracts. ORS 279.357(a); OAR 839-016-0100(1)(a).

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How Prevailing Wage Rates Are Determined

Annual Surveys Are Sent to Employers.

BOLI uses data from an annual survey to set the prevailing wage rates. The agency sends wage surveys to contractors in 14 regions of the state to find out what they are paying to different types, or classifications, of workers. If the survey results do not provide enough information to determine the prevailing wage rates, then the agency considers other information, including prevailing wage rates determined by the United States Department of Labor. ORS 279.348; ORS 279.359.

Wage Rates and Work Classifications

The prevailing practice of the industry determines how work is classified. Wage rates for each classification are listed as a base rate and an hourly fringe rate. Rates are determined for a number of classifications. It is important to note that it is the work performed by the employee, not the worker's title or qualifications, that determines which classification applies.

Rate Book Published Twice Annually

BOLI publishes the prevailing wage rates twice a year, and periodically updates them to reflect recent labor agreements or other changes. BOLI provides the wage rate publication free of charge. State law requires public agencies to include applicable prevailing wage rates in the contract specifications of covered projects and contractors to post them at all PWR job sites.

30.200 Action by district attorney; effect on others. If any district attorney has reasonable cause to believe that any person or group of persons is engaged in violation of ORS 166.155 or 166.165, the district attorney may bring a civil claim for relief in the appropriate court, setting forth facts pertaining to such violation, and request such relief as may be necessary to restrain or prevent such violation. Any claim for relief under this section does not prevent any person from seeking any other remedy otherwise available under law. [1981 c.785 §4]

ACTIONS ON OFFICIAL BONDS

30.210 To whom official bonds are security. The official undertaking or other security of a public officer to the state, or to any county, city or other public corporation of like character therein, is a security to the state, county, city or public corporation, as the case may be, and also, by all persons severally for the official delinquencies against which it is intended to provide.

30.220 Parties. When a public officer by official misconduct or neglect of duty forfeits an official undertaking or other security of the public officer, or renders the sureties of the public officer liable thereon, any person injured by the misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in the name of the person against the officer and the sureties of the officer, to recover the amount to which the person may by reason thereof be entitled.

30.230 Leave to begin action. Before an action can be commenced by a plaintiff other than the state or the public corporation named in the undertaking or security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or security, and an affidavit of the plaintiff or some person on behalf of the plaintiff showing the delinquency; but if the matters set forth in the affidavit are such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that leave has been granted, the defendant on motion shall be entitled to judgment of dismissal without prejudice; if it does, the defendant may controvert the allegation, and if the issue be found in favor of the defendant, judgment shall be given accordingly. [Amended by 1979 c.284 §63]

30.240 Subsequent delinquencies on same bond. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining a

other action on the same undertaking or security for another delinquency.

30.250 Amount of judgment. In an action upon an official undertaking or security, if judgments have already been recovered on the same undertaking or security against the surety therein, otherwise by confession, and if such recovery is established on the trial, judgment shall not be given against the surety for an amount exceeding the difference between the amount of the penalty and the amount that already has been recovered against the surety.

TORT ACTIONS AGAINST PUBLIC BODIES

(Generally)

30.260 Definitions for ORS 30.260 to 30.300. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

(1) "Department" means the Oregon Department of Administrative Services.

(2) "Director" means the Director of the Oregon Department of Administrative Services.

(3) "Governing body" means the group or officer in which the controlling authority of any public body is vested.

(4) "Public body" means:

(a) The state and any department, agency, board or commission of the state;

(b) Any city, county, school district or other political subdivision or municipal or public corporation and any instrumentality thereof;

(c) Any intergovernmental agency, department, council, joint board of control, created under ORS 190.125 or other like entity which is created under ORS 190.003 to 190.130, and which does not act under the direction and control of any single member government;

(d) Any nonprofit corporation that is organized and existing under ORS chapter 65 and that has only political subdivisions or municipal, quasi-municipal or public corporations in this state as members; or

(e) A private child-caring agency, as defined in ORS 418.205, that meets the criteria specified in ORS 30.880 (2) and that receives more than 50 percent of its funding from the state for the purpose of providing residential treatment to children who have been placed in the care and custody of the state or that provides residential treatment to children more than half of whom have been placed in the care and custody of the state.

(5) "State" means the state or any branch, department, agency, board or commission of the state.

(6) "Local public body" means any public body other than the state.

(7) "Nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(8) "Tort" means the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy. [1967 c.627 §1; 1975 c.609 §11; 1977 c.823 §1; 1981 c.109 §1; 1987 c.915 §9; subsections (7) and (8) enacted as 1987 c.705 §6; 1989 c.905 §1; 1989 c.1004 §2; 1993 c.500 §3; 1997 c.215 §4]

Note: Sections 2, 3 and 4, chapter 579, Oregon Laws 1997, provide:

Sec. 2. (1) The following facilities and training homes are public bodies for the purposes of ORS 30.260 to 30.300:

(a) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives more than 50 percent of its funding from the state or a political subdivision of the state for the purpose of providing residential or vocational services to mentally retarded or developmentally disabled individuals.

(b) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives less than 50 percent of its funding from the state or a political subdivision of the state but that provides residential or vocational services to mentally retarded or developmentally disabled individuals, more than half of whom are eligible for funding for services by the office of Developmental Disabilities Services of the Mental Health and Developmental Disability Services Division under criteria established by the office.

(2) The provisions of this section apply only to a nonprofit residential training facility, nonprofit residential training home or nonprofit facility that provides services to mentally retarded or developmentally disabled individuals under a contract with:

(a) The Mental Health and Developmental Disability Services Division;

(b) A community mental health and developmental disabilities program established pursuant to ORS 430.620; or

(c) The Vocational Rehabilitation Division. [1997 c.579 §2]

Sec. 3. Section 2 of this Act is repealed December 31, 2001. [1997 c.579 §3]

Sec. 4. Section 2 of this Act applies only to causes of actions that arise on or after the effective date of this Act [October 4, 1997] and before December 31, 2001. Notwithstanding the repeal of section 2 of this Act by section 3 of this Act, any cause of action that arises on or after the effective date of this Act and before December 31, 2001, shall continue to be governed by ORS 30.260 to 30.300 on and after December 31, 2001, as though section 2 of this Act had not been repealed. [1997 c.579 §4]

30.265 Scope of liability of public body, officers, employees and agents; liability in nuclear incident. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to action or suit for its torts

and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598. The sole cause of action for any tort of officers, employees or agents of a public body acting within the scope of their employment or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 shall be an action against the public body only. The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action or suit against any such officer, employee or agent of a public body whose act or omission within the scope of their employment or duties gives rise to the action or suit. No other form of civil action or suit shall be permitted. If an action or suit is filed against an officer, employee or agent of a public body, on appropriate motion the public body shall be substituted as the only defendant.

(2) Every public body is immune from liability for any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a public body when such officer, employee or agent is immune from liability.

(3) Every public body and its officers, employees and agents acting within the scope of their employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598, are immune from liability for:

(a) Any claim for injury to or death of any person covered by any workers' compensation law.

(b) Any claim in connection with the assessment and collection of taxes.

(c) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(d) Any claim which is limited or barred by the provisions of any other statute, including but not limited to any statute of ultimate repose.

(e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

(f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and

applicable, unless such act was done or omitted in bad faith or with malice.

(4) ORS 30.260 to 30.300 do not apply to any claim against any public body or its officers, employees or agents acting within the scope of their employment arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.

(5) The amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against the state or its officers, employees or agents acting within the scope of their employment or duties, arising before July 2, 1975. Any such claim may be presented and enforced to the same extent and is subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted, but the procedure set forth in ORS 278.120 shall be applicable thereto.

(6) ORS 30.287 and the amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against any local public body or its officers, employees or agents acting within the scope of their employment or duties, arising before December 31, 1975. Any such claim may be presented and enforced to the same extent and subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted.

(7) Subsection (1) of this section applies to any action of any officer, employee or agent of the state relating to a nuclear incident, whether or not the officer, employee or agent is acting within the scope of employment, and provided the nuclear incident is covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

(8) Subsection (3)(c) of this section does not apply to any discretionary act that is found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection. [1967 c.627 §§2,3,10; 1969 c.429 §1; 1975 c.609 §12; 1977 c.823 §2; 1981 c.490 §4; 1985 c.731 §31; 1987 c.705 §7; 1991 c.861 §1]

30.266 [1977 c.781 §2; 1981 c.109 §2; 1985 c.731 §20; 1989 c.873 §1; repealed by 1991 c.756 §5]

30.267 Liability for certain medical treatment at Oregon Health Sciences University facilities. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation, that are provided on the Oregon Health Sciences University campus or in any Oregon Health Sciences University clinic are within the scope of their

state employment or duties when performed by:

(a) Salaried physicians or dentists employed at any full-time equivalent by the Oregon Health Sciences University;

(b) Nonsalaried or courtesy physicians or dentists affiliated with the Oregon Health Sciences University;

(c) Medical, dental or nursing students or trainees affiliated with the Oregon Health Sciences University;

(d) Volunteer physicians or dentists affiliated with the Oregon Health Sciences University; or

(e) Any nurses, students, orderlies, volunteers, aides or employees of the Oregon Health Sciences University.

(2) As used in this section:

(a) "Nonsalaried or courtesy physician or dentist" means a physician or dentist who receives a fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. The term does not include a physician or dentist described under subsection (1)(a) of this section.

(b) "Volunteer physician or dentist" means a physician or dentist who does not receive a salary, fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. [1977 c.851 §2]

30.268 Liability for certain medical treatment at facilities other than Oregon Health Sciences University. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation that are provided at a location other than the Oregon Health Sciences University campus or one of the Oregon Health Sciences University clinics are within the scope of state employment or duties when:

(a) Provided by members of the Oregon Health Sciences University faculty or staff, Oregon Health Sciences University students under prior written express authorization from the President of the Oregon Health Sciences University or a representative of the president to provide those services at that location;

(b) The services provided are within the scope of the express authorization; and

(c) The Oregon Health Sciences University:

(A) Derives revenue in a similar amount or percentage as it would for care rendered

on the Oregon Health Sciences University campus or at an Oregon Health Sciences University clinic; or

(B) Is performing a salaried, nonfee-generating or volunteer public community or nonfee-generating educational service by providing the services.

(2) For the purposes of ORS 30.260 to 30.300, services constituting patient care that are provided at a location other than the Oregon Health Sciences University campus or one of the Oregon Health Sciences University clinics are not within the scope of state employment or duties when:

(a) Such services constitute an exclusively private relationship between the patient and a person described in subsection (1)(a) of this section; and

(b) The requirements of subsection (1)(b) and (c) of this section are not met. [1977 c.851 §3; 1995 c.84 §1]

30.270 Amount of liability. (1) Liability of any public body or its officers, employees or agents acting within the scope of their employment or duties on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) \$100,000 to any claimant as general and special damages for all other claims arising out of a single accident or occurrence unless those damages exceed \$100,000, in which case the claimant may recover additional special damages, but in no event shall the total award of special damages exceed \$100,000.

(c) \$500,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds \$500,000, any party may apply to any circuit court to apportion to each claimant the proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence.

(4) Liability of any public body and one or more of its officers, employees or agents, or two or more officers, employees or agents of a public body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section.

(5) For any claim arising in connection with a nuclear incident, no provision of this section shall limit the amount of damages recoverable for injuries or death or loss of or damage to property, or loss of use of property as a result of a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210. [1967 c.627 §4; 1969 c.429 §2; 1975 c.609 §13; 1987 c.705 §8; 1987 c.915 §13]

30.275 Notice of claim; time of notice; time of action. (1) No action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this section.

(2) Notice of claim shall be given within the following applicable period of time, not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

(a) For wrongful death, within one year after the alleged loss or injury.

(b) For all other claims, within 180 days after the alleged loss or injury.

(3) Notice of claim required by this section is satisfied by:

(a) Formal notice of claim as provided in subsections (4) and (5) of this section;

(b) Actual notice of claim as provided in subsection (6) of this section;

(c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (2) of this section; or

(d) Payment of all or any part of the claim by or on behalf of the public body at any time.

(4) Formal notice of claim is a written communication from a claimant or representative of a claimant containing:

(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employee or agent of the public body;

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

(c) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

(5) Formal notice of claim shall be given by mail or personal delivery:

(a) If the claim is against the state or an officer, employee or agent thereof, to the office of the Director of the Oregon Department of Administrative Services.

(b) If the claim is against a local public body or an officer, employee or agent thereof, to the public body at its principal administrative office, to any member of the governing body of the public body, or to an attorney designated by the governing body as its general counsel.

(6) Actual notice of claim is any communication by which any individual to whom notice may be given as provided in subsection (5) of this section or any person responsible for administering tort claims on behalf of the public body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the public body or an officer, employee or agent of the public body. A person responsible for administering tort claims on behalf of a public body is a person who, acting within the scope of the person's responsibility, as an officer, employee or agent of a public body or as an employee or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

(7) In an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was given as required by this section.

(8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury. [1967 c.627 §5; 1969 c.429 §3; 1975 c.604 §1a; 1975 c.609 §14; 1977 c.823 §3; 1979 c.284 §64; 1981 c.350 §1; 1993 c.500 §4; 1993 c.515 §1]

30.278 Reporting notice of claim of professional negligence to licensing board. When notice is received under ORS 30.275 of a claim of professional negligence against a physician, optometrist, dentist, dental hygienist or naturopath who is acting within the scope of employment by a public

body or within the scope of duties as defined by ORS 30.267, the person receiving the notice shall report to the appropriate licensing board, in the same manner as required by ORS 742.400, the information required by ORS 742.400 to be reported by insurers or self-insured associations. [1987 c.774 §64]

Note: 30.278 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 30 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

30.280 [1967 c.627 §6; repealed by 1975 c.609 §25]

30.282 Local public body insurance against liability; payment of assessment to state Insurance Fund. (1) The governing body of any local public body may procure insurance against liability of the public body and its officers, employees and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the public body and its officers, employees and agents and if the public body has authority to levy taxes, it may include in its levy an amount sufficient to establish and maintain such a fund on an actuarially sound basis.

(2) Notwithstanding any other provision of law, two or more local public bodies may jointly provide by intergovernmental agreement for anything which subsection (1) of this section authorizes individually.

(3) As an alternative or in addition to establishment of a self-insurance fund or purchase of insurance or both, the governing body of any local public body and the Oregon Department of Administrative Services may contract for payment by the public body to the department of assessments determined by the department to be sufficient, on an actuarially sound basis, to cover the potential liability of the public body and its officers, employees or agents acting within the scope of their employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any portion of potential liability, and for payment by the department of valid claims against the public body and its officers, employees and agents acting within the scope of their employment or duties. The department may provide the public body evidence of insurance by issuance of a certificate or policy.

(4) Assessments paid to the department under subsection (3) of this section shall be paid into the Insurance Fund created under ORS 278.425, and claims paid and administrative costs incurred under subsection (3) of this section shall be paid out of the Insurance Fund, and moneys in the Insurance Fund are continuously appropriated for those purposes. When notice of any claim is fur-

nished as provided in the agreement, the claim shall be handled and paid, if appropriate, in the same manner as a claim against a state agency, officer, employee or agent, without regard to the amount the local public body has been assessed. [1975 c.609 §19; 1977 c.428 §1; 1981 c.109 §4; 1985 c.731 §21]

30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees. (1) The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

(3) If any civil action, suit or proceeding is brought against any state officer, employee or agent which on its face falls within the provisions of subsection (1) of this section, or which the state officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the state officer, employee or agent may, after consulting with the Oregon Department of Administrative Services file a written request for counsel with the Attorney General. The Attorney General shall thereupon appear and defend the officer, employee or agent unless after investigation the Attorney General finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall reject defense of the claim.

(4) Any officer, employee or agent of the state against whom a claim within the scope of this section is made shall cooperate fully with the Attorney General and the department in the defense of such claim. If the Attorney General after consulting with the department determines that such officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the Attorney General may at any time reject the defense of the claim.

(5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Attorney General shall not prejudice the right of the officer, employee or agent to assert and establish an appropriate proceedings

that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against liability and reasonable costs of defending the claim, cost of such indemnification to be a charge against the Insurance Fund established by ORS 278.425.

(6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of liability of any public officer, agent or employee under ORS 30.270, or obviate the necessity of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of any other public officer, agent or employee on any claim arising out of the same accident or occurrence.

(7) As used in this section, "state officer, employee or agent" includes district attorneys and deputy district attorneys, special prosecutors and law clerks of the office of district attorney who act in a prosecutorial capacity, but does not include any other employee of the office of district attorney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the county. [1967 c.627 §7; 1975 c.609 §16; 1981 c.109 §5; 1981 c.913 §2; 1985 c.731 §22; 1987 c.763 §1]

30.287 Counsel for public officer; when public funds not to be paid in settlement; effect on liability limit; defense by insurer. (1) If any civil action, suit or proceeding is brought against any officer, employee or agent of a local public body other than the state which on its face falls within the provisions of ORS 30.285 (1), or which the officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the officer, employee or agent may file a written request for counsel with the governing body of the public body. The governing body shall thereupon engage counsel to appear and defend the officer, employee or agent unless after investigation it is determined that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the governing body shall reject defense of the claim.

(2) Any officer, employee or agent of a local public body against whom a claim within the scope of this section is made shall cooperate fully with the governing body and counsel in the defense of such claim. If the counsel determines and certifies to the governing body that such officer, employee or agent has not so cooperated or has otherwise

acted in prejudice of the defense of the claim, the governing body may at any time reject the defense of the claim.

(3) If the governing body rejects defense of a claim under subsection (1) of this section, no public funds shall be paid in settlement of the claim or in payment of any judgment against such officer, employee or agent. Such action by the governing body shall not prejudice the right of the officer, employee or agent to assert and establish in an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified by the public body against liability and reasonable costs of defending the claim.

(4) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the limits of liability of any public officer, agent or employee under ORS 30.270, or relieve any claimant of the necessity of compliance with ORS 30.275, nor to affect the liability of the local public body itself or of any other public officer, agent or employee on any claim arising out of the same accident or occurrence.

(5) The provisions of this section may be superseded to the extent that the claim against the public officer, employee or agent may be defended by any insurer, or may be subject under ORS 30.282 to agreement with the Oregon Department of Administrative Services, in which case the provisions of the policy of insurance or other agreement are applicable. [1975 c.609 §20; 1985 c.565 §3; 1989 c.1004 §1]

30.290 Settlement of claims by local public body. The governing body of any local public body may, subject to the provisions of any contract of liability insurance existing, compromise, adjust and settle tort claims against the public body or its officers, employees or agents acting within the scope of their employment for damages under ORS 30.260 to 30.300 and may, subject to procedural requirements imposed by law or other charter, appropriate money for the payment of amounts agreed upon. [1967 c.627 §8; 1975 c.609 §17; 1989 c.655 §1]

30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment; installment payments. (1) When a judgment is entered against or a settlement is made by a public body for a claim within the scope of ORS 30.260 to 30.300, including claims against officers, employees or agents required to be indemnified under ORS 30.285, payment shall be made and the same remedies shall apply in case of

nonpayment as in the case of other judgments or settlements against the public body except as otherwise provided in this section.

(2) If the public body is authorized to levy taxes which could be used to satisfy a judgment or settlement within the scope of ORS 30.260 to 30.300, and it has, by resolution, declared that the following conditions exist, interest shall accrue on the judgment or settlement, but the same shall not be due and payable until after the canvass and certification of an election upon a special tax levy for purposes of satisfying the judgment or settlement:

(a) The amount of the judgment or settlement would exceed amounts budgeted for contingencies, tort claims and projected surplus in the current budget;

(b) The amount of the judgment or settlement would exceed 10 percent of the total of the next fiscal year's projected revenues which are not restricted as to use, including the maximum amount of general property tax which could be levied without election but excluding any levy for debt service;

(c) Payment of the judgment or settlement within less than a certain number of years would seriously impair the ability of the public body to carry out its responsibilities as a unit of government; and

(d) The public body has passed an appropriate ordinance or resolution calling a special election to submit to its electors a special levy in an amount sufficient to satisfy the judgment or settlement.

(3) A certified copy of the resolution provided for in subsection (2) of this section shall be filed with the clerk of the court in which an order permitting installment payments could be entered.

(4) If the public body is not authorized to levy taxes as provided in subsection (2) of this section, and it has, by resolution, declared that the applicable conditions specified in subsection (2)(a) to (c) of this section exist, it may petition for an order permitting installment payments as provided in subsection (6) of this section.

(5) The provisions of subsections (2) and (4) of this section do not apply to the State of Oregon; provided, however, that if the conditions specified in subsection (4) of this section exist, the Secretary of State may, under Seal of the State of Oregon, attest thereto in lieu of a resolution, and the State of Oregon may thereafter petition for an order permitting installment payments as provided in subsection (6) of this section.

(6) If the procedure specified in subsections (2) to (5) of this section has been fol-

lowed, and, with respect to public bodies subject to subsection (2) of this section, the tax levy failed, the public body may petition for an order permitting installment payments. The petition shall be filed in the court in which judgment was entered or, if no judgment has been entered, it shall be filed in the circuit court of the judicial district in which the public body has its legal situs. Petitions by the State of Oregon where no judgment has been entered shall be filed in Marion County Circuit Court.

(7) The court in which a petition is filed shall order that the judgment or settlement be paid in quarterly, semiannual or annual installments over a period of time not to exceed 10 years. The court shall determine the term of years based upon the ability of the public body to effectively carry out its governmental responsibilities, and shall not allow a longer term than appears reasonably necessary to meet that need. The order permitting installment payments shall provide for annual interest at the judgment rate. [1967 c.627 §9; 1977 c.823 §4]

30.297 Liability of certain state agencies for damages caused by foster child; conditions; exceptions. (1) Notwithstanding ORS 125.235, the State Office for Services to Children and Families is liable for damages resulting from the intentional torts of a foster child who is:

(a) Residing in a foster home that has been certified by the office under the provisions of ORS 418.625 to 418.645, even though the child may be temporarily absent from that home; or

(b) Residing in an approved home that is receiving payment from the office under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815, even though the child may be temporarily absent from that home.

(2) Notwithstanding ORS 125.235, the Mental Health and Developmental Disability Services Division is liable for damages resulting from the intentional torts of a foster child who is residing in a developmental disability child foster home that has been certified by the division under the provisions of ORS 443.830 and 443.835, even though the foster child may be temporarily absent from that home.

(3) Except as otherwise provided in this section, the liability of the office and the division under this section shall be subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding subsections (1) and (2) of this section:

(a) The office and the division shall not be liable for any damages arising out of the operation of a motor vehicle by a foster child; and

(b) The office and the division shall only be liable for theft by a foster child upon a showing by clear and convincing evidence that the foster child committed the theft.

(5) For the purposes of this section:

(a) "Division" means the Mental Health and Developmental Disability Services Division.

(b) "Foster child" means:

(A) A minor child under the custody or guardianship of the office by reason of appointment pursuant to ORS chapter 125, 419A, 419B or 419C;

(B) A minor child under the physical custody of the office pursuant to a voluntary agreement with the parent under ORS 418.015 (1);

(C) A minor child placed in a certified foster home, pending hearing, by any person authorized by the office to make that placement;

(D) A person under 21 years of age who has been placed in an approved home that is receiving payment from the office under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815; or

(E) A child residing in a developmental disability child foster home certified under ORS 443.830 and 443.835.

(c) "Office" means the State Office for Services to Children and Families. [1991 c.756 §2; 1993 c.33 §370; 1995 c.664 §76; 1997 c.130 §1; 1999 c.316 §6]

Note: 30.297 and 30.298 were added to and made a part of 30.260 to 30.300 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

30.298 Liability of certain state agencies to foster parents for injury or damage caused by foster child; conditions; limitations. (1) Except as otherwise provided in this section, the State Office for Services to Children and Families is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if:

(a) The foster child resides in a foster home that is maintained by the foster parents and that has been certified by the office under the provisions of ORS 418.625 to 418.645; or

(b) The foster child is residing in an approved home that is maintained by the foster parents and that is receiving payment from

the office under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815.

(2) Except as otherwise provided in this section, the Mental Health and Developmental Disability Services Division is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if the foster child is residing in a developmental disability child foster home that has been certified by the division under the provisions of ORS 443.830 and 443.835.

(3) Except as otherwise provided in this section, the liability of the office and division under this section shall be subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding ORS 30.260 to 30.300:

(a) In no event shall the liability of the office and division under this section exceed \$5,000 for any number of claims arising out of a single occurrence;

(b) The liability of the office and division under this section is limited to economic damages, and in no event shall the office and division be liable for noneconomic damages;

(c) The office and division are liable under this section only to the extent the loss is not covered by other insurance; and

(d) No claim shall be allowed under this section unless written notice of the claim is delivered to the Oregon Department of Administrative Services within 90 days after the alleged loss or injury.

(5) The office and division shall not be liable under this section for:

(a) Damage to or destruction of currency, securities or any other intangible property;

(b) The unexplained disappearance of any property; or

(c) Loss or damage that is due to wear and tear, inherent vice or gradual deterioration.

(6) In no event shall the liability of the office and division under this section for damage to property exceed the difference between the fair market value of the property immediately before its damage or destruction and its fair market value immediately thereafter. The office and division shall not be liable for the costs of any betterments to the property that may be required by code, statute or other law as a condition of repair, replacement or reconstruction.

(7) The liability imposed under this section is in addition to that imposed for the

intentional torts of a foster child under ORS 30.297, but any amounts paid under this section shall reduce any recovery that may be made under ORS 30.297.

(8) For the purposes of this section:

(a) "Division" means the Mental Health and Developmental Disability Services Division.

(b) "Economic damages" and "noneconomic damages" have those meanings given in ORS 18.560.

(c) "Foster child" has that meaning given in ORS 30.297.

(d) "Office" means the State Office for Services to Children and Families. [1991 c.756 §3; 1997 c.130 §2; 1999 c.316 §11]

Note: See note under 30.297.

30.300 ORS 30.260 to 30.300 exclusive. ORS 30.260 to 30.300 is exclusive and supercedes all home rule charter provisions and conflicting laws and ordinances on the same subject. [1967 c.627 §11]

(Liability of Public Bodies for Year 2000 Failures)

Note: Sections 2 to 5, chapter 261, Oregon Laws 1999, provide:

Sec. 2. (1) In any action under ORS 30.260 to 30.300, it is an affirmative defense to any claim for relief based in whole or in part on a Year 2000 Failure that the public body made a good faith effort to avoid the Year 2000 Failure in the manner described in subsection (2) of this section.

(2) For the purpose of the affirmative defense established under this section, a public body makes a good faith effort to avoid a Year 2000 Failure if, before January 1, 2000, the public body:

(a) Identifies those systems that the public body believes most susceptible to Year 2000 Failures;

(b) Prepares or causes to be prepared a written analysis of the systems used by the public body;

(c) Prioritizes the relative importance of the different systems used by the public body;

(d) Identifies resources available for addressing possible Year 2000 Failures;

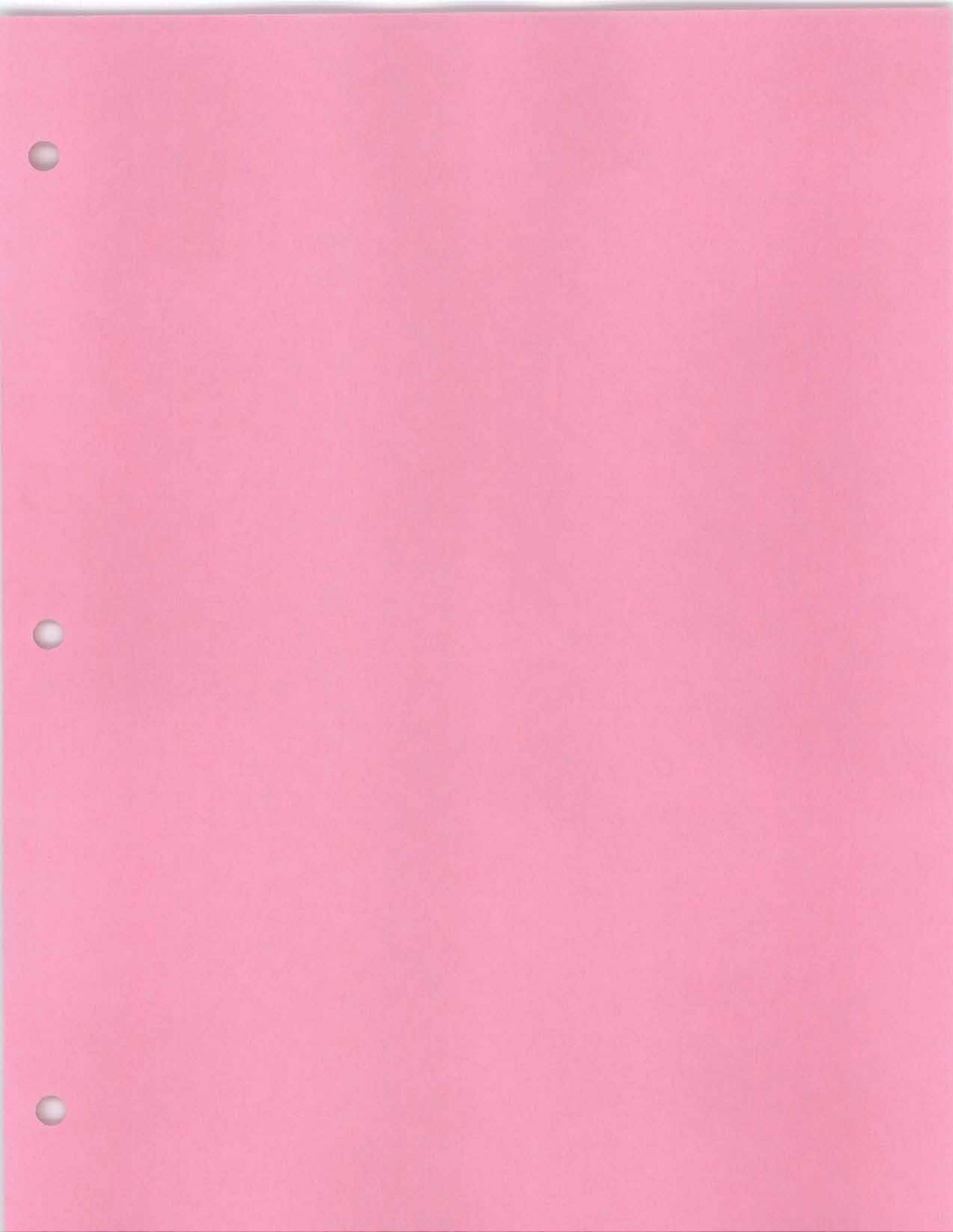
(e) Has approved plans and resources that are to be committed to correct possible Year 2000 Failures; and

(f) Can document substantial implementation of the plans approved under paragraph (e) of this subsection.

(3) Nothing in this section creates any new liability of a public body or affects any defense or immunity that would otherwise be available to a public body in an action based on a Year 2000 Failure, including but not limited to any defense or immunity available under ORS 30.260 to 30.300. If multiple injuries or claims result from a Year 2000 Failure, the failure shall be considered a single accident or occurrence for the purpose of ORS 30.270.

(4) For the purpose of this section:

(a) "Year 2000 Failure" means the failure of a system to accurately or correctly store, process, manipulate, retrieve, transfer or otherwise use date data or date-related information, or a failure or degradation in the performance of a system that is directly or indirectly caused by the system's failure to store, process, manipulate, retrieve, transfer or otherwise use date data



THE PROCESS

The process conforms with Chapter 12.48 of the Deschutes County Code. The following is a condensed overview.

1. THE PETITION

A petition requesting improvements to be made to a road, signed by not less than 25% of the owners of land abutting the proposed improvements, is filed with the Board of County Commissioners. An \$800.00 filing fee must accompany the petition.

2. FEASIBILITY STUDY

The Department shall complete a feasibility study and shall include:
Extent of the Project; Boundary for the LID; Description of the Design; Consistency with Applicable Land Use Regulations; Determination of the Not to Exceed Cost; Recommendation of Method of Assessment; Nature of Benefitted Properties; Description and Assessed Value of Each Lot; Maximum Possible Assessment Against Each Lot; Financial Feasibility of the Improvement.

3. ABANDON OR PROCEED

A decision is then made to abandon or proceed with local improvement district based on the feasibility study.

4. MEETINGS

The Department will conduct one or more neighborhood meetings with the affected property owners.

5. MAIL POLL

The Department will conduct a mail poll of owners. At least 60% of the owners must approve the project to continue the LID.

6. BOARD OF COMMISSIONERS

Based on the mail poll, the BOCC will decide if the LID should continue.

7. PUBLIC HEARING

The Department will mail each owner a notice of a public hearing in which they will have a chance to object to the L.I.D.

8. BOCC DECISION

At the hearing, the BOCC will decide the future of the LID based on the objections received.

9. MODIFICATIONS

Following the hearing, the Board may modify the proposed LID, estimated cost or method of assessment in response to information received; in which case, an additional hearing will be held.

10. LIEN

If the LID continues, the Board shall have the County Clerk place in the records a Notice of Proposed Lien on the benefited property.

11. LID CONSTRUCTION BID

The Road Department will have a contractor construct the improvements within the LID, according to applicable public bidding laws and adopted road standards.

12. PROJECT COST

After the road construction is completed and the final cost is tabulated, each property owner is notified by mail of the final cost of the improvement and the amount of assessment to each owner. The notice will contain the date of a public hearing to hear objections as to the amount of assessment.

13. PAYMENT FOR LID

After the public hearing, the Board will establish the final assessment. Each property owner will be mailed a notice of final assessment and given the choice of paying the full assessment at that time or paying the assessment in installments. The terms for installment payments will be contained in the notice (usually semi-annual payments over a ten-year period).

COMMONLY ASKED QUESTIONS

- Q.** What is the most common use of a LID?
- A.** To improve local access roads to County Road Standards.
- Q.** How can I start a LID?
- A.** Usually, the first step is to have a homeowners meeting and invite a Road Department representative who will be able to explain what a LID is and what steps the homeowners need to take to form a LID.
- Q.** Will Deschutes County maintain the local access road as a County road after the improvement is completed?
- A.** Yes, the road will become a County Maintained Road with regular road maintenance and snow plowing.
- Q.** Can improvements to local access roads be made using the local improvement district method if the improvement is less than adopted standards?
- A.** No, the roads must be constructed to current County standards.
- Q.** What is the method of apportioning the assessment?
- A.** The most common method of apportionment is to divide the assessment equally among the lots within the LID boundary.

**FOR MORE
INFORMATION**



Q. What is the Interest rate for the payment plan?

A. The interest rates have varied between 9% and 12%. Interest rates are set by the Board for each LID.

Q. Can payments be deferred?

A. Yes, if the property owner qualifies for a senior tax defement.

Q. Will there be a posted speed limit after the road has been paved?

A. Property owners can petition the County to conduct a speed study.

Q. Will the driveways be paved?

A. No, driveways with access permits will be reconstructed to match the grade of the new road. Usually a driveway apron will be paved five feet back from the edge of the paved road.

Q. Will the filling fee be refunded?

A. If the LID project is completed, the fee will be credited to the lots of those paying fees.

**ASK TO CHECK OUT
OUR L.I.D. VIDEO**



CALL (541) 388-6581
Garry Judd ** Wanda Callahan ** George Kolb

LOCAL IMPROVEMENT DISTRICT (L.I.D.) FOR RURAL PUBLIC ROADS

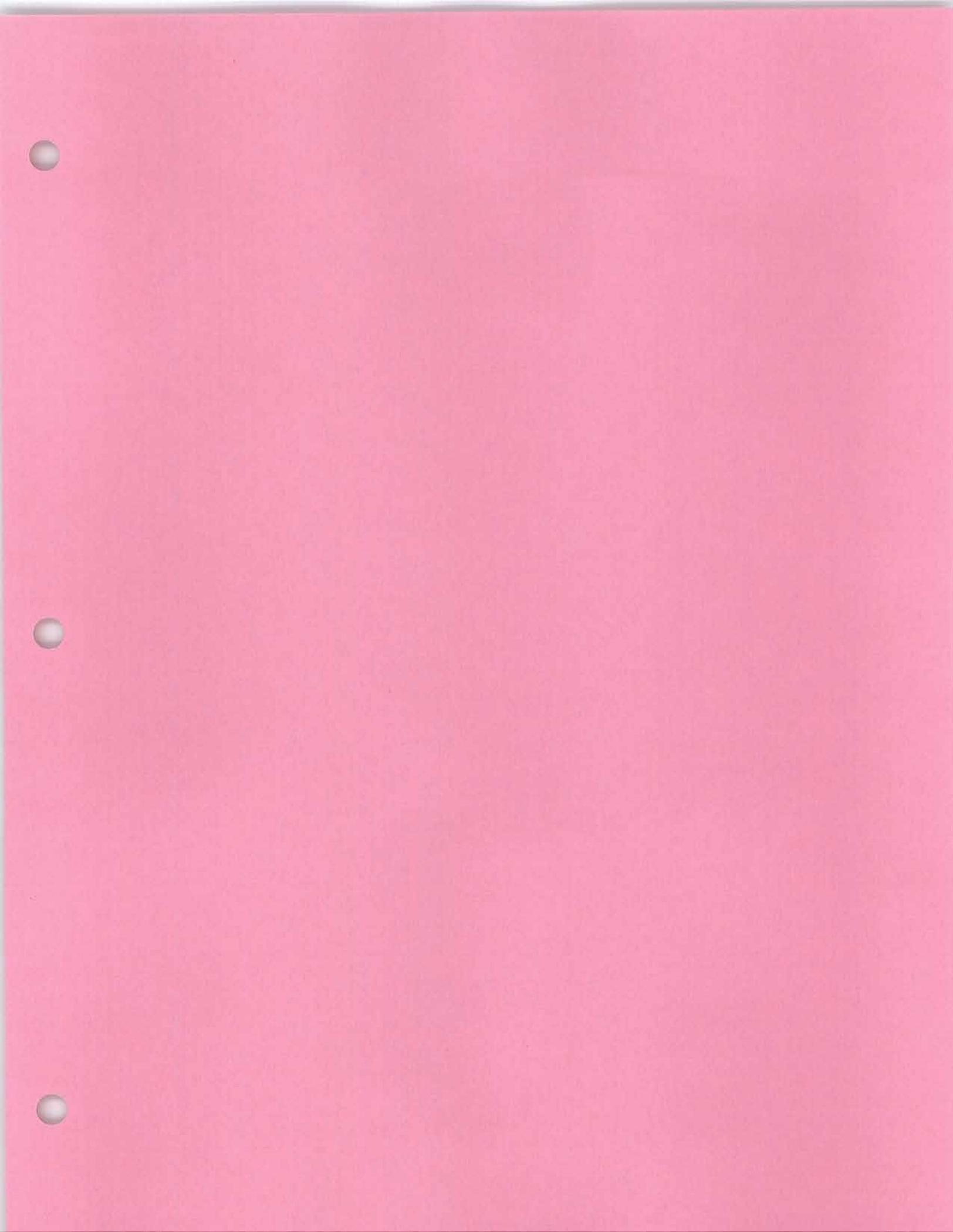


LOCAL IMPROVEMENT DISTRICTS
are created to construct road improve-
ments that are financed by special
assessment against benefited
properties.

A Brief Summary



**Deschutes County
Road Department**



Chapter 12.48. LOCAL IMPROVEMENTS

- 12.48.010. Purpose.
 - 12.48.020. Applicability.
 - 12.48.030. Relationship to state law.
 - 12.48.040. Definitions.
 - 12.48.041. Definition-Actual cost.
 - 12.48.042. Definition-Assessment for local improvement.
 - 12.48.046. Definition-Board.
 - 12.48.051. Definition-Capital construction.
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 - 12.48.310. Remedies.
 - 12.48.320. Collection.
 - 12.48.330. Minimum requirements for local improvements involving undeveloped land.
 - 12.48.340. Interim security.
- 12.48.010. Purpose.**
The purpose of this chapter is to implement the authority granted by the Oregon Revised Statutes to create local improvement districts to construct local improvements, as that term is defined herein, that are to be financed wholly or in part by special assessment against benefitted property and to provide a procedure for levying, collecting and enforcing payment of such special assessments.
(Ord. 94-025 § 1, 1994)

12.48.020. Applicability.

This chapter shall apply to local improvements located in unincorporated areas of the county. (Ord. 94-025 § 1, 1994)

12.48.030. Relationship to state law.

- A. The procedures for making local improvements, as that term is defined herein, shall be those set forth in this chapter, which procedures are adapted from Oregon Revised Statutes chapter 371. Where there is a conflict between Oregon Revised Statutes chapter 371 and the provisions contained herein, the provisions of this chapter shall prevail.
- B. In addition to the provisions of this chapter, the following state statutes shall apply to the assessment of properties for local improvements: Oregon Revised Statutes 223.205 and 223.210 to 223.295; Oregon Revised Statutes 223.405 to 223.485; Oregon Revised Statutes 223.505 through 223.650; Oregon Revised Statutes 223.770; Oregon Revised Statutes 287.502 to 287.515 and Oregon Revised Statutes 288.765. If there is a conflict between the statutes listed in this subsection and this chapter, the provisions of this chapter shall prevail.
- C. When officials of cities are referred to in the statutes listed in subsection (B) of this section, the corresponding officials of Deschutes County shall perform the required functions. The duties required of the governing body of a city under those statutes shall be performed by the board.

(Ord. 94-025 § 1, 1994)

12.48.040. Definitions.

As used in this chapter, unless the context requires otherwise the words and phrases are defined as set forth in 12.48.041-101.

(Ord. 94-025 § 1, 1994)

12.48.041. Definition-Actual cost.

"Actual cost" means all direct or indirect costs incurred by the county to deliver goods or provide services or undertake a capital construction project. The "actual cost" of

providing services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost whether stated as a minimum, fixed or variable amount. "Actual cost" includes, but is not limited to the cost of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, legal, administration, depreciation, amortization, reserve for delinquencies or defaults, debt service and any other item allowed by law. Administrative expenses include those incurred in preparation for formation of a local improvement district such as meeting with property owners, preparing and processing the feasibility report, providing notice and conducting hearings.

(Ord. 94-025 § 1, 1994)

12.48.042. Definition-Assessment for local improvement.

"Assessment for local improvement" means any fee, charge or assessment that does not exceed the actual cost incurred by the county for a local improvement.

(Ord. 94-025 § 1, 1994)

12.48.046. Definition-Board.

"Board" means the Board of County Commissioners for Deschutes County, Oregon.

(Ord. 94-025 § 1, 1994)

12.48.051. Definition-Capital construction.

"Capital construction" means the construction, modification, replacement, repair, remodeling or renovation of a structure or addition to a structure, which is expected to have a useful life of more than one year, and includes, but is not limited to:

- A. Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.
- B. Acquisition, installation of machinery or equipment, furnishings or materials which will become an integral part of a structure.
- C. Activities related to the capital construction such as planning, design, acquisition of interim or permanent financing, research, land use and environmental impact studies,

acquisition of permits or licenses or other services connected with the construction.

- D. Acquisition of existing structures, or legal interests in structures, in conjunction with capital construction.

(Ord. 94-025 § 1, 1994)

12.48.056. Definition-Engineer.

"Engineer" means the county engineer, roadmaster, surveyor or other engineer selected by the county governing body.

(Ord. 94-025 § 1, 1994)

12.48.061. Definition-Estimated assessment.

- A. "Estimated assessment" means, with respect to each property to be assessed in connection with a local improvement, the total assessment that, at the time of giving notice of the assessment and the right to object or remonstrate, the board estimates will be levied against the property following completion of the local improvement. The estimate shall be based on the board's estimate at that time of the actual costs of the local improvement and the proposed formula for apportioning the actual costs to the property.

- B. Estimated assessment shall be determined by:

1. Excluding from estimated actual costs the estimated financing costs associated with any bonds issued to accommodate the payment of the assessment in installments; and
2. Including in estimated actual costs the estimated financing costs associated with interim financing of the local improvement.

(Ord. 94-025 § 1, 1994)

12.48.066. Definition-Final assessment.

"Final assessment" means, with respect to each property to be assessed in connection with a local improvement, the total assessment levied against the property following completion of the local improvement. The total assessment shall be based on the actual costs of the local improvement and the formula for apportioning the actual costs to the property.

(Ord. 94-025 § 1, 1994)

12.48.071. Definition-Financing.

- A. "Financing" means all costs necessary or attributable to acquiring and preserving interim or permanent financing of a local improvement.
- B. The costs of financing may include the salaries, wages and benefits payable to employees of the county to the extent the same are reasonably allocable to the work or services performed by the employees in connection with the financing of a local improvement or any part thereof. However, as a condition of inclusion of any salaries, wages or benefits payable to employees of the county as financing costs of a local improvement or any part thereof, the county shall establish a record keeping system to track the actual work done or services performed by each employee on or in connection with such local improvement.
- C. Financing costs that are to be incurred after the levy of a final assessment may be included in the final assessment based on the county's reasonable estimate of the financing costs if the county first documents the basis for the estimate and makes the documentation available to interested persons on request.

(Ord. 94-025 § 1, 1994)

12.48.076. Definition-Local improvement.

"Local improvement" means a capital construction project, or part thereof, undertaken by the county under the authority of this chapter financed by assessments upon lots or parcels that have been benefitted by all or a part of the local improvement:

- A. Which provides a special benefit only to specific properties or rectifies a problem caused by specific properties;
- B. The costs of which are assessed against those properties in a single assessment upon the completion of the project; and
- C. For which the property owner may elect to make payment of the assessment plus

appropriate interest over a period of at least 10 years.

For purposes of this section, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

(Ord. 94-025 § 1, 1994)

12.48.081. Definition-Owner.

"Owner" means a vendee under a recorded land contract or if there is no such contract, the holder of the record title, which vendee or holder has a present interest equal to or greater than a life estate.

(Ord. 94-025 § 1, 1994)

12.48.086. Definition-Road, county road and public road.

"Road," "county road" and "public road" have the meanings given those terms in Oregon Revised Statutes 368.001.

(Ord. 94-025 § 1, 1994)

12.48.091. Definition-Structure.

"Structure" means any temporary or permanent building or improvement to real property of any kind, which is constructed on or attached to real property, whether above, or beneath the surface.

(Ord. 94-025 § 1, 1994)

12.48.096. Definition-Undeveloped land.

"Undeveloped land" means a lot or parcel with no improvements or with improvements that constitute less than 25 percent of the land value.

(Ord. 94-025 § 1, 1994)

12.48.101. Definition-Value.

"Value" means the real market value of property or improvements, as shown by the most recent valuation by the county assessor or by evidence of recent sales of comparable property in the same development.

(Ord. 94-025 § 1, 1994)

12.48.110. Petition or resolution for improvement of roads in unincorporated areas.

A. Proceedings to cause any local improvement to be made or constructed in an unincorporated area may be initiated by the board by resolution or by a petition signed by not less than 25 percent of the owners of the land representing not less than 25 percent of the land abutting on the proposed local improvement and presented to the board asking for the improvement.

B. The resolution or petition shall indicate the approximate location and suggested boundary for the proposed local improvement and describe the nature of the improvement desired.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.120. Signers of petition and objection in event of cotenancies.

In case of tenants by the entireties, joint tenants or tenants in common, the parcel of land is considered as having one owner, which owner shall be deemed to have signed the petition provided for in section 12.48.110 or the objection provided for in section 12.48.170 only if every cotenant of the parcel has signed. Signatories on behalf of corporate owners must include a resolution of the board demonstrating authority.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.130. Designation.

The properties that are to be assessed for part or all of the cost of a public improvement shall be included within the boundaries of, and known together as a local improvement district or LID. In addition, the property on which the local improvement is to be located and such other incidental properties as necessary for a logical boundary may be included.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.140. Filing fees.

The board may by resolution or order adopt filing fees and deposit requirements for petitions for local improvements.

- A. The filing fee or deposit shall reflect the actual cost incurred by the county in reviewing the petition, completing the feasibility study, providing notice of abandonment, organizing neighborhood meetings and conducting a mail poll pursuant to sections 12.48.150 to 12.48.166.
- B. The filing fee or deposit shall be deposited within the county's LID Fund.
- C. The filing fee or deposit shall be non-refundable if, at any time prior to the letting of contracts for construction of the improvement, the board declares the proposed LID abandoned.
- D. In the event the board directs the improvement to be made and the improvement proceeds to completion, the filing fee or deposit shall constitute a credit against the final assessment(s) for the parcel(s) of land owned by the person(s) who paid such fee or deposit.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.150. Completion of feasibility study; determination of specially benefitted properties and method of assessment; financial feasibility.

- A. When a resolution is adopted or a petition filed, the board shall refer the resolution or petition to the engineer, who shall complete a feasibility study of the proposed local improvement that shall include investigation of at least the following:
 - 1. The optimal location and extent of the improvement so that the project will facilitate orderly development and efficient use of infrastructure throughout the neighborhood as well as effective maintenance of the improvement; and
 - 2. A boundary for the LID which includes all properties specially benefitted by the improvement; and
 - 3. A description of the construction design for the project, including, where appropriate, preliminary plans and/or specifications; and

- 4. Consistency with applicable land use regulations; and
- 5. A determination of the maximum actual cost of the improvement, including any interim financing; and
- 6. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the maximum actual cost of the improvement among the properties specially benefitted; and
- 7. The nature of the special benefit(s) to be derived by assessed properties; and
- 8. A map or plat showing specially benefitted properties to be included in the LID; and
- 9. A description and assessed value of each lot, parcel of land or portion thereof, to be specially benefitted by the improvement, with the names of the record owners thereof; and
- 10. The maximum assessment or assessments against each lot or parcel to be included within the LID; and
- 11. The financial feasibility of the improvement as detailed in subsection (B) of this section.

- B. In the course of the investigation required by subsection (A) of this section, the engineer shall submit an overview of the proposed LID to the county finance director and request analysis regarding the financial feasibility of the project. The finance director shall review the information submitted by the engineer and request additional information if necessary to evaluate the financial feasibility of the project and the risk to the county. At a minimum, the finance director's analysis shall include the following:
 - 1. A review of assessment to value ratios for individual properties and the LID as a whole; and
 - 2. A determination of whether the percentage of undeveloped land in the LID substantially increases the financial risk of the project and whether the requirements of section 12.48.330 must and can be met; and

3. The recommended method of interim financing and the availability of such financing; and
 4. The recommended method of long-term financing and the feasibility of such financing, including chances for a successful bond sale, necessary bump rate, etc.; and
 5. Other financing considerations, including but not limited to possible collection problems and general credit worthiness among property owners, projected status of the county's LID fund at the time of interim financing, project eligibility for State of Oregon "Special Public Works Fund," and the impact of project financing on current county debt structure.
- C. The finance director shall forward his analysis to the engineer who shall then incorporate the analysis into the final draft of the feasibility study.
- D. The engineer shall prepare a report for the board containing the results of the foregoing feasibility study. In performing the investigation and developing a report, the engineer shall consult with the county finance director and may also consult with the assessor's office, planning division or county counsel's office and any other office as necessary. In addition, the engineer may solicit from owners of affected properties and other parties such information as he deems necessary to complete the report required by this section.
- E. Where the local improvement petitioned for includes the construction and installation of lateral sewers, street mains or similar facilities, a separate statement of the estimated cost of and estimated assessment for the construction and installation of lateral sewers, street mains or similar facilities shall be included.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.160. Description of real property-Effect of error in name of owner.

- A. For the purposes of the feasibility study and any subsequent listing of properties as part of an estimated or final assessment, the real property to be assessed may be described by giving the subdivision according to the United States survey when coincident with the boundaries thereof, or by lots, blocks and addition names, by metes and bounds, or by reference to the book and page of any public record where the description may be found, so that the description can be made certain.
- B. If the property owner is unknown, the land may be assessed to "unknown owner," or "unknown owners." If the property is correctly described, no final assessment shall be invalidated by a mistake or omission in the name of the owner. Where the name of the true owner, or the owner of record, or any parcel of real property is given, the final assessment shall not be held invalid on account of any error or irregularity in the description if the description would be sufficient in a deed or conveyance from the owner, or is such that, in a suit to enforce a contract to convey, employing such description a court of equity would hold it to be good and sufficient.
- C. Any description of real property that conforms substantially to the requirements of this section shall be sufficient in all proceedings relating to a final assessment for a local improvement, foreclosure and sale of delinquent assessments, and in any other proceeding relating to or connected with levying, collecting and enforcing final assessments.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.165. Decision to abandon or proceed with local improvement; notice to petitioners; neighborhood meeting.

- A. If, at any time during the course of the feasibility study, the engineer determines that the proposed local improvement is not

feasible, the engineer shall forward the results of the study to the board. The board may request further study or adopt an order declaring the LID abandoned.

- B. If the board orders the abandonment of the LID, it shall require the department to give written notice of the abandonment to all petitioners mailed to the addresses provided in the petition.
- C. If, in the initial study or after requested further study, the engineer determines that the proposed local improvement is feasible, the engineer shall organize, give notice of and host one or more neighborhood meetings for the owners of record of all specially benefitted lots within the LID. The engineer shall utilize the meeting(s) to review the results of the feasibility study, the LID process, the nature and benefits of the proposed improvements and financing options. The engineer shall also address questions raised by meeting participants.

(Ord. 96-074 § 1, 1996)

12.48.166. Mail poll; contents; required percentage of approval.

- A. Following the neighborhood meeting(s), the department shall conduct a mail poll of the owners of record of all specially benefitted lots within the LID to determine the level of support for completing the proposed improvements. Along with the request for approval or objection to the improvement, the poll shall also include a description of the proposed improvement, the maximum actual cost of the improvement, the maximum assessment or assessments against each property, a map illustrating the location of the proposed improvements and the LID boundary, an overview of the LID process, an estimated construction schedule, available financing options, the process for obtaining additional information, and the postmark deadline for responding.
- B. To be eligible for further consideration by the board, a proposed improvement must receive, by the postmark deadline, a minimum poll approval rate of at least 60 percent of the

owners of land representing at least 60 percent of the total amount of the estimated assessment for the proposed local improvement.

(Ord. 96-074 § 1, 1996)

12.48.170. Report on poll results-Determination to proceed with LID formation-Filing of objections.

- A. Following the mail poll, the engineer shall forward to the board a report on the results of the poll. If the proposed local improvement fails to receive the minimum poll approval rate, the board shall adopt an order declaring the LID abandoned. If the proposed improvement receives the minimum poll approval rate, the board may proceed with formation of the LID.
- B. If the board decides to proceed with formation of the LID, it shall enact an order creating and describing the LID, declaring its intention to make the local improvement, providing the manner and method of carrying out the improvement, setting a public hearing on the improvement and directing that notice be given of the public hearing. Written notice containing the information set forth in section 12.48.180 of this chapter shall thereupon be mailed to the owner of each lot or parcel to be assessed for the proposed improvement.
- C. Owners shall have the right to object to the further prosecution of the local improvement either by filing with the board a written objection within 20 days after the mailing of the notice or by oral testimony at the hearing, the date of which shall be not less than 20 days after the date the notice was mailed.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.180. Notice contents.

The hearing notice shall contain the following information:

- A. A general description of the proposed local improvement and of the LID. The description need not be by metes and bounds and shall be such that an average person can

determine from it the general location of the property and shall include a listing of the affected parcels or lots.

- B. A statement that the feasibility study has been filed for the proposed local improvement and that the report is on file and subject to public examination.
- C. The maximum actual cost of the improvement and the maximum assessment or assessments against the land of the owner.
- D. The results of the mail poll.
- E. The time and place of a public hearing on the improvement to hear objections.
- F. A statement explaining the remonstrance process.
- G. If more than 50 percent of the parcels or lots to be assessed are undeveloped, a statement that a single owner of more than three lots or parcels to be assessed will be required to furnish security in the amount of 110 percent of the estimated assessment for each lot or parcel held by the owner in excess of three lots or parcels.

(Ord. 96-074 § 1, 1996; Ord. 94-025 § 1, 1994)

12.48.190. Mailing of notice.

Notice required to be sent to the owner of a lot affected by a proposed estimated or final assessment shall be addressed to the owner or the agent of the owner. If the address of the owner or of the agent of the owner is unknown, the notice shall be addressed to the owner or the agent of the owner at the address where the property is located. Any mistake, error, omission, or failure with respect to the mailing shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service upon the property owner, or, if personal service cannot be had, then by publication once a week for two successive weeks in a newspaper designated by the board and having general circulation in Deschutes County.

(Ord. 94-025 § 1, 1994)

12.48.200. Board order or Resolution for improvement-Recording-Vacation of order or resolution.

- A. At the time of the public hearing, the board shall hear any testimony on the proposed local improvement and may continue the hearing as it deems necessary. If objections are received by the board signed by more than 50 percent of the owners of land representing more than 50 percent of the total amount of the estimated assessment for the proposed local improvement, the proposed local improvement shall, by order or resolution of the board, be declared abandoned and no new petition may be filed and no new resolution may be adopted for the local improvement within a period of one year after the date of the order, unless the board exercises its discretion under subsection (C) of this section to modify the proposal in response to the testimony and objections.
- B. If following the hearing the board determines that the proposed local improvement should be made and the number of objections mentioned in this section has not been received, the board may at its discretion, by order or resolution describing the land to be assessed, direct the local improvement to be made by contract or by force account. If by contract, it shall be awarded in the same manner as provided for other contracted county road improvements.
- C. Following the hearing, the board may modify the proposed local improvement, the estimated cost, the assessment method or the estimated assessments in response to information received and objections raised, in which case an additional hearing shall be noticed in accordance with section 12.48.170 to 12.48.190 of this chapter. The provision of additional information to justify the chosen methodology shall not trigger the requirements of this subsection.
- D. The board can suspend or abandon proceeding with a local improvement at any time up to letting contracts for construction if it determines that the minimum requirements

of subsection 12.48.330(A) of this chapter are not being met or for any other reason.

- E. Subject to subsection (C) of this section, the board may at its discretion and on its own motion or at the request of interested parties reopen a previously noticed public hearing that has been closed upon the mailing of notice to owners of property to be assessed not less than 5 days prior to the reopening of the hearing.

(Ord. 99-027 § 1, 1999; Ord. 96-074 § 1, 1996; Ord. 94-033 § 1, 1994; Ord. 94-025 § 1, 1994)

12.48.210. Recording order or resolution with County Clerk.

- A. The board shall cause the Finance Director or his delegate to file with the County Clerk's office a notice of intent to lien, signed by the Finance Director or his delegate, for each property on the list for entry in the appropriate lien docket. A notice of intent to lien shall include at a minimum a description of the property, the owner's name, a reference to the order or resolution of the board ordering that the improvements be made and the amount of the estimated assessment, along with a statement that upon completion of the improvements, a lien for the amount of the final assessment will be imposed upon the property. The Clerk shall thereupon record and index the notice of intent to lien in the appropriate lien docket. Recording of a notice of intent to lien and docketing it in the appropriate lien docket shall serve as notice that upon completion of the local improvement described in the order or resolution, a lien in a fixed amount representing each listed properties' equitable share of the actual costs of the local improvements will be imposed on each of the listed properties.
- B. If the proposed local improvement described in the order or resolution of the board is not commenced within two years after the notice is recorded, the board may by a new order or resolution vacate its former order or resolution for the proposed local improvement. The board shall record with

the County Clerk the order or resolution vacating the former order or resolution for the proposed local improvement. Thereupon the land described shall be free of the effect of the former order or resolution. The County Clerk shall endorse upon the new order or resolution the date of the filing thereof, and shall record and index the same in the lien record referred to in subsection (A) of this section.

(Ord. 99-027 § 2, 1999, Ord. 94-025 § 1, 1994)

12.48.220. Engineer to compile local improvement actual cost-Source of payment-Reimbursement of source-Additional work.

- A. After the local improvement has been completed, inspected by the engineer and accepted by the board, the engineer shall compile the actual cost of the local improvement. Where the local improvement includes the construction and installation of lateral sewers, street mains or similar facilities, the engineer shall separately compile the total cost of those local improvements.
- B. Payment of the cost of the local improvement other than for the construction and installation of lateral sewers and street mains or similar facilities shall be made from the general road funds, from any funds available for the construction or improvement of county roads or from revenues available from interim financing methods authorized by law. Payment of the cost of the construction and installation of lateral sewers and street mains or similar facilities shall be made from any funds available to the county for such improvements.
- C. The funds expended for the local improvement shall be reimbursed or the local improvement warrants shall be retired to the extent of the proceeds of an assessment against the land benefitted by the local improvement, but no estimated or final assessment shall be made against any operating railroad right of way without the consent of the owner thereof. The final

assessment shall assess each landowner a portion of the cost of the local improvement corresponding to the relative benefit to the land of the landowner from the local improvement.

- D. All of the costs of improvements within intersections connected with any local improvement under this chapter may be borne by the county.
- E. Unless notified to the contrary by the owner prior to the acceptance of bids for local improvements under this chapter, an existing driveway shall be reconstructed to the property line to conform with the new grade. Additional driveways or other road connections, including retaining walls, may be constructed simultaneously with the local improvements when a written request is filed with the board prior to the acceptance of bids by the affected abutting landowners. The cost of the driveway and all requested work shall be charged to the abutting owner and added to the final assessment against the land of the owner.

(Ord. 94-025 § 1, 1994)

12.48.230. Allocation of costs of sidewalk or curb construction and other improvements.

Notwithstanding any provision to the contrary in this chapter, the cost of construction of sidewalks under this chapter shall be assessed in proportion to the front footage of the land or otherwise, as provided in those sections, to the owners of land abutting on the side of the street or road on which the sidewalks are constructed and fronting on such sidewalks. The cost of construction of all other local improvements under this chapter shall be assessed in the manner provided in this chapter, to the owners of land benefitted by the local improvement.

(Ord. 94-025 § 1, 1994)

12.48.240. Engineer to ascertain assessment-Hearing on objections-Board order or resolution.

- A. The engineer shall ascertain the amount of the final assessment against each parcel of land assessed for the local improvement and report the same to the board.
- B. The board by order or resolution shall thereupon set the time and place for a hearing of objections to the final assessments as fixed in the report of the engineer.
- C. Not less than ten days prior to the date of the hearing, the board shall mail to the owner of each property proposed to be assessed, at the address of the owner as shown on the petition or on the latest tax roll of the county, a written notice of the time and place for the hearing of objections and of the amount of the proposed final assessment against the land of the owner.
- D. After hearing any written or oral objections, the board shall by order or resolution, listing and describing each property to be assessed and listing and describing the ownership of each such property, determine from the evidence submitted the amount of the final assessment against each individual listed property. The order or resolution shall certify the amount of the final assessment against each listed individual property. In addition, the order or resolution shall (1) specify the terms for installment payments and, subject to section 12.48.260, the date that payments or applications for installment payments are due; (2) order in accordance with Oregon Revised Statutes 223.210 that notice of the final assessment be published; (3) order in accordance with Oregon Revised Statutes 223.210 that the director of public works mail to the owners of the assessed properties notice of the final assessment and an application to finance the local improvements; and (4) direct that the Finance Director or his delegate cause to be filed with the County Clerk individual lien claims for the assessments against the properties on the list, excluding any property known to be

subject to bankruptcy proceedings, in the appropriate form and (5) direct that the Clerk record the liens and enter them in the appropriate lien docket of the county.

(Ord. 99-027 § 3, 1999; Ord. 94-025 § 1, 1994)

12.48.250. Recording of final assessment Lien.

- A. After passage of the order or resolution determining the final assessments, the Finance Director or his delegate shall for each property on the list of assessments certified by the board file with the Clerk a claim of lien, signed by the Finance Director or his delegate, reflecting the information set forth in the list of assessments certified by the board for entry in the appropriate lien docket. The claim of lien shall include a statement of the amounts assessed against each lot or parcel, the name of the owners, the date of the order or resolution levying the assessment and the date on which payment or application for installment payment is due. The County Clerk shall endorse thereon the date of the filing thereof and record and index it in an appropriate county lien docket.
- B. For properties known to be subject to bankruptcy proceedings, the lien may be filed separately consistent with the requirements of applicable bankruptcy law.
- C. Upon such entry in the lien docket, the final assessments and interest are a lien upon the land against which the same are assessed. Each lot or parcel is deemed to be benefitted by the local improvement to the full amount of the final assessment levied thereon. The lien shall have priority over all other liens and encumbrances whatsoever to the fullest extent provided by law.
- D. No transfer, sale or division of any such lot or parcel, or change in the legal description thereof, in any way divests the lien from the original parcel and the whole thereof. Failing to enter the name of the owner or a mistake in the name of the owner does not in any way render void any estimated or final assessment and does not in any way affect the lien on the land described.

- E. All payments shall be entered in the lien docket and shall discharge the lien to the amount of such payment. Upon payment of the final assessment in full, the Finance Director or his delegate shall satisfy the same by filing with the County Clerk a satisfaction.

The clerk shall record the satisfaction in the lien docket referred to above, and the parcel of land charged with such assessment shall be thereby discharged from the lien.

(Ord. 99-027 § 4, 1999; Ord. 94-025 § 1, 1994)

12.48.260. When assessment due, payable and delinquent-Interest-By whom collected.

- A. Except as provided in subsection (B) of this section, 30 days after the final assessment is certified, the entire amount against each lot or parcel shall be due and payable at the office designated by the board; and if not so paid, shall be delinquent from that date and shall bear interest at a rate established by the board.
- B. The owner of property assessed under this chapter shall have the right to apply for installment payment of the assessment as provided in Oregon Revised Statutes 223.210. Notwithstanding Oregon Revised Statutes 223.210(2), unless otherwise stated in the order of final assessment, the time period for making application for installment payments shall be within 30 days after the publication of notice of assessment. In no case shall the deadline for application for installment payments be fewer than 10 days after the publication of notice of assessment.
- C. The provisions of Oregon Revised Statutes 223.205 and 223.210 to 223.295 (Bancroft Bonding Act), 223.770 relating to the assessment of property benefitted by public improvements and to the issuance of bonds and other obligations for the cost of the improvements, the provisions of Oregon Revised Statutes 287.502 to 287.515 relating to the issuance of improvement warrants by cities, and the provisions of Oregon Revised Statutes 288.165 relating to interim financing shall apply insofar as practicable and

applicable in relation to the assessment by the county of the cost or any portion of the cost of local improvements against the property benefitted in accordance with this chapter and to the issuance of bonds and other obligations by the county. However, notwithstanding the provisions of Oregon Revised Statutes 223.295 issuing bonds and other obligations under the provisions of this section, a county may incur indebtedness to an amount not exceeding .0375 of the latest real market valuation of the county.

- D. Where, in Oregon Revised Statutes 223.205 to 223.295, 223.770 and 287.502 to 287.515, officials of governmental units or cities are referred to, the corresponding officials of Deschutes County, where applicable, shall perform the required functions. The duties required of the common council, board of trustees, or other governing body of a city shall be performed as to this section by the board. The duties required of the auditor, clerk or other officer charged with keeping the records of a city shall be performed as to this section by the County Clerk. The duties required of the mayor or other executive head of a city shall be performed as to this section by the chairman of the board. The duties of the city treasurer shall be performed as to this section by the county treasurer.

(Ord. 94-025 § 1, 1994)

12.48.270. Errors in assessment calculation or determination.

If the county finds that there has been an error in the calculation of the assessment or in any other aspect of the certification of the assessments, the board may amend the order or resolution levying the assessments to correct such errors; cause the necessary correction to be made in the county lien docket; and send a corrected notice of assessment by mail.

(Ord. 99-027 § 5, 1999; Ord 94-025 § 1, 1994)

12.48.275. Reinstatement of liens released in error.

- A. In the event that any lien for an assessment for a local improvement that was validly

imposed under law is released in error, the Board of County Commissioners shall have the authority to order the reinstatement of the lien.

- B. An order or resolution reinstating such a lien shall contain the following information: the amount of the final assessment; a description of the affected property; the owner of record and the owner's address; and a statement that upon filing with the County Clerk and recording in the appropriate lien docket, the lien for the assessment shall be reinstated as a lien upon the subject property.
- C. The Board shall cause the order or resolution to be filed with the County Clerk for recording and entry in the appropriate lien docket. The Clerk shall cause a lien to be imposed on the subject property in the same manner as prescribed in Section 12.48.230 of this Chapter. The lien shall have the same effect as a lien imposed under Section 12.48.230 of this Chapter and shall be treated as if it had never been released.
- D. The property owner shall receive notice of the reinstatement of the lien, but shall have no right to challenge such reinstatement unless it can be shown that the release was supported by payment in full of the outstanding assessment amounts.

(Ord. 99-027 § 6, 1999; Ord. 95-055 § 1, 1995)

12.48.280. Deficit assessments or refunds when initial assessment based on estimated cost.

If it is found that the amount of the assessment is insufficient to defray the expenses of the local improvement, the board may, by motion, declare such deficit and declare a deficit assessment and shall mail notice of the hearing to owners of the affected property. After such hearing, the board shall make an equitable deficit assessment, by order or resolution, which shall be entered and recorded in the appropriate county lien docket as provided by this chapter; and notices of the deficit assessment shall be mailed and the collection of the assessment shall be made in

accordance with this chapter consistent with the collection of the original assessment.
(Ord. 99-027 § 7, 1999; Ord. 94-025 § 1, 1994)

12.48.290. Rebates.

If for any reason the county collects more than is due under this chapter or any order or resolution of the board authorized herein, then the board must ascertain and declare the same by order or resolution; and when so declared, the excess amounts must be entered on the lien docket as a credit on the appropriate assessment. In the event that the assessment has been paid, the person who paid the same or his legal representative, shall be entitled to the repayment of such rebate credit, or portion thereof, that exceeds the amount unpaid on the original assessment. Notice of the rebate shall be sent to the person who paid the amount at the person's last address as shown on the LID records of the county. If within 60 days the person cannot be located, payment shall be made to the current owner of the property from which overpayment arose without recourse against the county by the original payor.
(Ord. 99-027 § 8, 1999; Ord. 94-025 § 1, 1994)

12.48.300. Curative provisions.

No assessment shall be rendered invalid by reason of a failure of the report to contain all of the information required by this chapter; or by reason of a failure to have all of the information required to be in the order or resolution authorizing improvement, the order or resolution levying assessments, the lien docket or notices required to be published or mailed; nor by the failure to list the name of, or tax list of, or mail notice to, the owner of any property as required by this chapter; or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unjust in its effect upon the person complaining; and the board shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.
(Ord. 99-027 § 9, 1999; Ord. 94-025 § 1, 1994)

12.48.310. Remedies.

Actions of the board pursuant to this chapter are subject to judicial review exclusively by writ of review in accordance with the procedures in Oregon Revised Statutes 34.010 to 34.100. Review of an order or resolution of the board directing that an improvement be made or levying an assessment may be commenced only by a property owner who has filed a written remonstrance or objection or who has remonstrated or objected in person at a hearing before the board as provided in this chapter. Failure to so remonstrate or object shall constitute a waiver and failure to exhaust administrative remedies.
(Ord. 99-027 § 10, 1999; Ord. 94-025 § 1, 1994)

12.48.320. Collection.

- A. An assessment or installment payment is delinquent from the date it is due as ordered by the board or specified by the treasurer. Delinquencies shall accrue interest at a rate specified by the treasurer. If any installment payment remains delinquent for a period of one year, the entire outstanding assessment amount shall then be accelerated and become due along with any interest and penalties.
- B. If any installment on any lien bonded as provided by law remains delinquent for a period of one year from the time it became due and payable, or at any time after 60 days from the time it became due and payable if not bonded, the county may order the initiation of foreclosure proceedings against the affected property.
- C. The order shall: (1) list the person or persons in default and the description of the property or properties on which the sum or sums are owing; (2) state the sums due, including principal, interest and any late payment penalties or charges for each property in default; (3) declare the entire balance of the assessment to be due and payable at once; and (4) direct that all unpaid assessments, interest and penalties be collected in any manner provided by law.

D. Enforcement of assessment liens and collection shall be carried out in conformance with Oregon Revised Statutes 223.505 to 223.650.

(Ord. 94-025 § 1, 1994)

12.48.330. Minimum requirements for local improvements involving undeveloped land.

A. Prior to approval of local improvements specially benefitting properties that are predominantly undeveloped, the board shall subject to subsections (B) and (C) of this section find that each of the requirements listed in this subsection (A) has been met or will be met prior to commencement of construction:

1. The value of the land and improvements for each of the lots or parcels to be assessed, other than those held by public agencies, exceeds the assessment by a ratio of no less than 2:1;
2. Any lots or parcels requiring conditional use approvals for dwellings in residential subdivisions are subject to clear and objective approval standards, and it can be demonstrated that there is a reasonable expectation that dwellings on such parcels can be approved;
3. All services (electricity, water, telephone, sewer, if applicable) have been installed in the right of way adjacent to the lot or parcel;
4. No lots or parcels to be assessed are subject to land sale contracts or are encumbered by a blanket mortgage, trust deed or land sale contract;
5. Proof of payment of all current and prior years' ad valorem taxes, interest and penalties for 90 percent of the lots in the development proposed to be assessed and 100 percent of the lots or parcels held by a developer;
6. Security in accordance with section 12.48.340 will be posted by the owner to cover 110 percent of the amount of the estimated assessment for each lot or parcel in excess of three lots or parcels held in single ownership. For purposes

of this subsection, separate properties each held in the names of separate spouses will be deemed to be held in single ownership. In addition, properties held in the name of a closely held corporation will be deemed to be held in the name of the principal shareholder. For purposes of this section, the board retains the right to ignore what it regards to be sham transactions the purpose of which it finds to be to evade this provision.

- B. In addition, the county may require submission of such additional information as it deems necessary, such as but not limited to, financial statements, credit reports, title reports, etc., to evaluate the financial viability of the project and the risk to the county.
- C. The board may at its discretion allow for a variance from any of the standards of this section if it determines, based upon the totality of the circumstances surrounding the LID, that risk to the county would not be appreciably heightened by relaxation of the standard in question.
- D. In any event, notwithstanding that the minimum standards of this section have been met, the board may exercise its discretion to refuse to proceed with the local improvements if it concludes that the financial risks to the county of proceeding are too great.

(Ord. 94-025 § 1, 1994)

12.48.340. Interim security.

- A. Security required by section 12.48.330 shall take the form of cash or a certificate of deposit deposited with the county or an irrevocable letter of credit in a form and issued by a financial institution acceptable to the county for 110 percent of the amount of the estimated assessment on each lot or parcel subject to this requirement.
- B. Such security shall be held for the period between commencement of construction until 90 days after the lien of the final assessment attaches to the subject property, unless the

security is resorted to under subsection (C) of this section or the board abandons prosecution of the local improvement.

- C. The security shall serve as collateral for the owner's ability to provide a lien to the county at the completion of construction of the local improvements. If the posting party is not able to provide the county with a lien due to the stay of bankruptcy at the completion of construction of the local improvements, the county may (1) find the owner to be in breach and resort to the security for payment of the final assessment; or (2) use the security as collateral for purposes of seeking relief from the stay of bankruptcy so as to allow assessment of the subject property or properties with the final assessment for the local improvements.
- D. The security and an agreement reflecting the terms of this section shall be in place prior to the awarding of contracts for construction of the local improvement.
- E. Cash deposited with the county shall be deposited in an interest bearing account, which interest shall be credited to the owner.
- F. To the extent that the security offered is segregable, the security will be released to the owner to reflect any reduction by bona fide sale in the number of lots or parcels held by the owner prior to commencement of construction.

(Ord. 94-025 § 1, 1994)

